

# CITY OF HERMOSA BEACH

## M E M O R A N D U M

TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: KRISTY MORRIS, ENVIRONEMNTAL ANALYST  
SUBJECT: 2/9/16 AGENDA, ITEM 2F – SUPPLEMENTAL REVISED OCCUPANCY LICENSE  
AGREEMENT AND CLARIFICATION ON INSURANCE DOCUMENTS  
DATE: FEBRUARY 9, 2016

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The Occupancy License Agreement was revised to correct typographical errors on the signature page (Page 4).

The Certificate Of Liability Insurance was automatically renewed on December 9, 2015 by the Los Angeles Community Garden Council using the contact information on file. Staff requested a copy of the Insurance Certificate on January 21, 2016 and submitted a request to Nickerson Insurance Services, Inc. (License #0491589) to change the City Manager contact from Steve Burrell to Tom Bakaly. The insurer affording coverage is American States Insurance Company (NAIC# 19704).

# CITY OF HERMOSA BEACH

## OCCUPANCY LICENSE FOR COMMUNITY GARDEN

Term: 5 Years (renewable) Effective Date:

02/09/2016

License Holder:

Hermosa Beach Community Garden



# **CITY OF HERMOSA BEACH**

## **Occupancy License for Community Garden in South Park**

This Occupancy License for Community Garden ("License Agreement" or "License") is made and entered into this 9th day of February, 2016, by and between the CITY OF HERMOSA BEACH ("City") and HERMOSA BEACH COMMUNITY GARDEN, an unincorporated association ("Licensee") for the purpose of operation and maintenance of a community garden in the northeast corner of South Park.

### **RECITALS**

- A. Licensee desires the exclusive occupancy of a designated portion of the northeast corner of South Park to operate a community garden for the benefit of the Hermosa Beach community.
- B. Licensee represents and warrants that it possesses the qualifications, experience and expertise to operate a community garden.
- C. A community garden is a use consistent with park and open space purposes that will enhance the overall appearance and use of South Park, and provide a new outdoor recreational opportunity for City residents of all ages.

**NOW, THEREFORE**, in consideration of the abovementioned, the parties do hereby agree as follows:

- 1. Location.** The area to be governed by this License Agreement is approximately 3,721 square feet of the northeast corner of South Park ("Licensed Premises"), as shown on the site plan attached hereto as "Exhibit A" and incorporated herein by reference.
- 2. Use of Licensed Premises.** At all times the Licensee shall manage and operate the Licensed Premises exclusively for the purpose of operating a community garden in accordance with the terms and provisions of this License Agreement. The Licensed Premises shall not be used by Licensee for any other purpose. Licensee shall develop a community outreach plan subject to approval by the City that will educate and inform City residents of the existence and availability of the garden.
- 3. Licensed Premises Improvements.** The Licensed Premises will be delivered to the Licensee in "AS IS" condition and Licensee accepts the Licensed Premises in the condition it is in at the time of delivery and shall thereafter maintain it in good condition free of debris, litter and trash. Any alterations to the Licensed Premises for its use as a community garden shall be at Licensee's expense, and shall be subject to the prior written approval of City. Signs, if any, shall be subject to City approval. Artificial lighting is prohibited.
- 4. Term of License.** This License is awarded for a period of five (5) years (the "License Term"), commencing when the City issues a Notice to Proceed, unless earlier terminated as provided in Section 9 hereof. This License may be renewed for additional terms upon its expiration, if the parties mutually agree in writing. City reserves the right to alter the terms of the License upon extension.
- 5. Operating Hours.** The community garden may be open for gardening activities daily between sunrise and sunset. The garden shall be closed and secured between sunset and sunrise.

**6. Operating Rules.** Initial assignment of garden plots shall be based on the date and time of the sign-up during the ongoing enrollment period- a lottery will not be used. Licensee shall maintain a wait list in the order in which applications for use of a garden plot are received. Garden plots may be assigned for not longer than two (2) year terms. A term may not be renewed with the incumbent gardener as long as there is someone on the wait list. Gardeners shall not grow marijuana (cannabis) or any crop that is illegal under State or federal law. Gardeners shall adhere to the rules set forth in Exhibit B attached hereto and incorporated herein by reference.

**7. Consideration.** In light of the benefits provided to the community by the community garden, no monetary consideration shall be required in exchange for the rights granted by this License Agreement. That notwithstanding, (a) 20% of the food grown in the garden shall be donated to a food pantry approved by the City, pursuant to a contract between Licensee and the food pantry that shall be subject to City review and approval; (b) neither Licensee nor any gardener shall sell any food grown in the Licensed Premises; and (c) Fees charged to gardeners for use of a plot in the community garden shall be subject to advance City approval.

**8. Utilities and Maintenance of the Licensed Premises.**

- (a) Licensee shall be responsible for all maintenance.
- (b) Licensee hereby agrees that it has received the Licensed Premises in satisfactory condition. Licensee shall clean and maintain the Licensed Premises, and shall keep it in clean, orderly and sanitary condition at all times throughout the License Term.
- (c) Licensee assumes responsibility for all damage to City's property caused by its use of the Licensed Premises and shall reimburse City for correction of any such damage.

**9. Termination and Revocation of License.** This License may be terminated with or without cause by either party by providing written notice to the other party at least sixty (60) days in advance of desired termination date. Licensee expressly acknowledges that City's plans for and/or use of the Licensed Premises may change at any time in a manner inconsistent with this License and that Licensee has no permanent right to the continued use of the Licensed Premises, nor does this License give rise to any such right, title or interest in the Licensed Premises. In the event of termination, Licensee shall remove all of its equipment and materials from the Licensed Premises, vacate the Licensed Premises within five (5) working days, surrender this License, and deliver the Licensed Premises in a clean, sanitary condition substantially the same as when the Licensed Premises was delivered to Licensee.

**10. Insurance Requirements.**

- a. Licensee shall have insurance in the following amounts:
  - (1) General liability insurance with at least One Million Dollars (\$1,000,000) combined single-limit coverage per occurrence for bodily injury and property damage; and
  - (2) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended.

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- b. Each insurance policy required above shall be acceptable to the City Attorney:
- (1) The General Liability policy shall name the City specifically and separately as an additional insured under the policy by a valid endorsement.
  - (2) Provide for written notice within 30 days or less of policy cancellation or termination;
  - (3) Provide coverage by a Best's A-V rated carrier or better, admitted in California;
  - (4) Provide a service of suit endorsement for all carriers not admitted in California; and
  - (5) Provide that the City may pay any self-insured retention or deductible should Licensee fail or refuse to do so.
- c. Failure to comply with insurance requirements under this Agreement shall be a material breach of this Agreement.

**11. Indemnification.** Licensee (which in this paragraph includes its employees, agents, or subcontractors) shall indemnify, defend and hold harmless the City of Hermosa Beach, its officers, agents and employees from any and all loss, damage, liability, cost or expenses, including attorneys' fees, expert fees and costs of suit, for any of the following: a) Any personal injuries, property damage or death that Licensee or its invitees and guests may sustain while using the Licensed Premises, or from any dangerous condition of the Licensed Premises; and b) Any claim of liability to third parties arising out of Licensee's negligence or wrongful acts or omissions, excepting only liability caused by the sole negligence or wrongful conduct of the City.

**12. Anti-Assignment Clause.** Licensee shall not assign, delegate, transfer or sublicense any duty or right under this License, or any portion of the Licensee's use of the Licensed Premises. Any such purported assignment, delegation, transfer or sublicense shall be void unless the City has previously approved such action in writing.

**13. Costs and Attorney's Fees.** In the event of litigation brought by either party to this License Agreement to enforce any provisions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of suit incurred pursuant to said litigation.

**14. Licensee not a Lessee.** No legal title or leasehold interest in the Licensed Premises shall be deemed or construed to have been created or vested in the Licensee by anything contained in this License Agreement.

**15. Provisions Cumulative.** The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.

**16. Merger Clause.** This License Agreement and its Exhibits are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this License Agreement and its Exhibits, the provisions of this License Agreement shall prevail.

**17. Anti-Waiver Clause.** None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

**18. Severability.** The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provisions of this License Agreement.

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**19. Notices to Parties.** Any statements, communications or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to all parties:

Licensee:  
Hermosa Beach Community Garden

City:  
City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, CA 90254  
Attn: City Manager

**20. Choice of Law.** This Agreement shall be governed by the laws of the State of California. Venue for any action arising from this Agreement, including but not limited to matters concerning validity, construction, performance or enforcement shall be exclusively in the state or federal courts located in Los Angeles County, California.

**21. Possessory interest.** Licensee acknowledges that this License may create a taxable possessory interest subject to property taxation, and that Licensee shall be solely responsible for satisfaction of any property taxes levied in connection with this License.

**22. City's Access to Licensed Premises.** Licensee acknowledges the City's absolute right to enter the License Premises in order to assure Licensee's compliance with the terms of this License.

**23. Non-Discrimination.** Licensee represents and agrees that it does not and will not in the operation of the community garden pursuant to this License discriminate against any person because of race, religion, color, medical condition, sex, sexual orientation, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the City by its Officer thereunto authorized and by Licensee, the date and year first above written.

CITY OF HERMOSA BEACH  
A Municipal Corporation

HERMOSA BEACH COMMUNITY GARDEN

\_\_\_\_\_  
Tom Bakaly, City Manager

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

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
Michael Jenkins, City Attorney

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

\_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Elaine Doerfling, City Clerk