

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

LICENSE AGREEMENT TO USE BIXBY PARK

33468

THE CITY OF LONG BEACH ("City") hereby grants to LEE OSTENDORF, an individual ("Licensee"), whose address is 5390 E. 8th Street, Long Beach, CA 90804, a non-exclusive revocable license to use the area of public property described in Exhibit "A" attached hereto and incorporated herein by this reference ("Bixby Park") on the terms and conditions stated below, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on January 21, 2014.

1. USE. Licensee shall use the central quad area of Bixby Park, located at 130 Cherry Avenue, Long Beach, California, specifically, the central quad located east of the community center and south of the playground, as well as the basketball court and bandshell for the sole purpose of conducting a certified farmer's market, and for no other purposes. During the setup and cleanup of vendor booths, Licensee, and her agents and/or vendors, may only use the cement walkways surrounding the farmers' market area for access; under no circumstances will vehicle traffic be allowed to use the grass areas surrounding the farmers' market. The Licensee shall use the premises on Tuesdays, from 3:00 p.m. to 7:00 p.m. Pacific Standard Time, and from 3:00 p.m. to 8:00 p.m. during Daylight Saving Time. A total of five (5) hours will be allowed for setup and cleanup: three (3) hours prior to the opening of the farmers' market for setup, and two (2) hours after its closing for cleanup for the sale of fresh fruit and vegetables, eggs, cut flowers, decorative plants, seafood, honey and other items as approved by the City Manager or his designee. Prohibited items shall include, but are not limited to, fireworks and alcohol.

Each vendor at the farmers' market shall be regulated by and conform to all applicable regulations in Title 3, Chapter. 3, Article 6.5 of the California Code of Regulations and subsequent amendments thereto, and other applicable regulations of the State of California, County of Los Angeles and City of Long Beach.

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1 In its use of Bixby Park, Licensee and vendors shall not in any manner
2 interfere with or impede persons holding local area vending permits. In addition,
3 Licensee and vendors shall not interfere with or impede access for emergency vehicles
4 through Bixby Park.

5 2. TIME OF USE. Licensee shall begin setting up for the farmers'
6 market on Tuesday no earlier than 12:00 p.m. and shall be off the premises by 9:00 p.m.
7 during Pacific Standard Time or by 10:00 p.m. during Daylight Saving Time. Licensee,
8 and her agents and/or vendors shall have access to restrooms at Bixby Park from 1:00
9 p.m. to one (1) hour after the farmers' market closes. Licensee may request changes to
10 the farmers' market schedule, setup times and further after-hour use of the restroom
11 and/or Bixby Park Community Center; however, such changes or additional use shall be
12 subject to the approval of the City Manager, or his designee, which shall not be
13 unreasonably withheld.

14 3. INITIAL TERM. The initial term of this License Agreement shall
15 commence on January 1, 2014 and shall terminate on December 31, 2016. The term of
16 the License Agreement may be extended for up to two (2), two (2) year terms at the
17 discretion of the City Manager or his designee.

18 4. LICENSE FEE. Licensee agrees to pay City for the rights and
19 privileges granted by this License Agreement a license fee of one percent (1%) of the
20 weekly total of vendor fees collected, from Zero Dollars (\$0) to (\$4,000.00); or two
21 percent (2%) of the weekly total of vendor fees collected, from Four Thousand and One
22 Dollars (\$4,001.00) to Eight Thousand Dollars (\$8,000.00); or three percent (3%) of the
23 weekly total of vendor fees collected, from Eight Thousand and One Dollars (\$8,001.00)
24 and above. In addition, Licensee shall pay all applicable use fees for any restroom and
25 after-hour community center use for the rights and privileges granted by this License.

26 5. VENDOR FEE. Licensee shall collect six percent (6%) of gross
27 receipts from farmer/produce booths and ten percent (10%) of gross receipts from non-
28 farmer/produce booths on a weekly basis. Gross receipts shall include the total sales

1 price exclusive of tax of all goods sold without deduction or set off. Gross receipts shall
2 include sales for cash, credit, or services whether collected or not. Gross receipts shall
3 not include, or if included will be deducted (but only to the extent they have been
4 included), any sales and use taxes, transportation taxes, excise taxes, franchise taxes, or
5 other similar taxes which are added to the selling price, separately stated, collected
6 separately from the selling price or collected from customers.

7 Should the City incur any costs associated with the Licensee's use of the
8 premises, the Licensee shall reimburse the City for the expense.

9 6. COMPLIANCE. Licensee shall comply with all City, state and
10 federal laws, regulations, rules, codes, and instructions from the City's City Manager or
11 designee relating to the use of Bixby Park. Notwithstanding anything to the contrary
12 herein, failure to do so may result in immediate revocation or suspension of this License
13 Agreement. Licensee, and any sub-licensees or other parties with which it may deal with
14 regard to this License, shall meet all requirements of the California Health and Safety
15 Code Sections 114345 through and including 114350.

16 7. PERMITS, LICENSES, AND TAXES. Licensee shall obtain, pay
17 for and carry or display, as required, all permits or licenses required by law, regulation, or
18 code for the use of Bixby Park, including but not limited to any permits required by the
19 City Health Department and any business licenses and shall cause all vendors to obtain
20 the same. Licensee and vendors shall produce said permits or licenses for inspection
21 upon request by any police officer or other authorized representative of the City. In
22 addition, Licensee shall pay all taxes which may be levied including possessory interest
23 taxes.

24 8. STANDARDS OF SERVICE. Licensee and vendors shall
25 conduct business in a manner acceptable to City. Selling shall be done in an orderly,
26 courteous and lawful manner. Licensee shall correct safety deficiencies and violations of
27 safety practices immediately and shall cooperate fully with the City in the investigation of
28 accidents occurring at Bixby Park during any farmers' market.

1 9. NUISANCE. Licensee and vendors shall not use Bixby Park nor
2 sell any item in any manner that will create a nuisance or unreasonable annoyance to the
3 public as determined by the City Manager or his designee. Licensee shall keep Bixby
4 Park in a safe, clean wholesome, sanitary condition; free from trash, garbage, rubbish
5 and litter. No substance constituting a fire hazard or material detrimental to the public
6 health shall be permitted or remain at Bixby Park.

7 10. MAINTENANCE. Licensee and vendors shall at their own cost
8 and expense provide all supplies, material and equipment necessary for use of Bixby
9 Park for a farmers' market and shall maintain them in a clean and safe condition to the
10 satisfaction of the City Manager or his designee. Vendors at the farmers market shall
11 use absorbent substances to prevent or reduce oil droppings from vehicles. Licensee
12 shall also maintain and clean Bixby Park after each farmers' market to the condition of
13 Bixby Park immediately preceding the farmers' market. With the exception of ordinary
14 wear and tear, Licensee shall be liable for any and all loss, injury or damage to Bixby
15 Park resulting from the use of Bixby Park and the sale of produce by Licensee, any
16 vendor, and their employees, agents, invitees, or business visitors.

17 11. SPECIAL EVENTS AND FILMING. City may issue Special
18 Event Permits for Bixby Park, but shall not issue said Permits on the day or days
19 designated in Section 2 hereof. Licensee shall allow preparation for the special events
20 on Bixby Park, provided that City notifies Licensee at least thirty (30) days prior to the
21 date on which a special event will occur and ten (10) days prior to the date a filming event
22 will occur.

23 12. UTILITIES. The City shall pay for all utilities utilized by the
24 farmer's market during the permitted use, except for additional refuse deemed necessary
25 by the Department of Parks, Recreation and Marine, which shall be paid for by Licensee.
26 City shall not be responsible for providing security, maintenance or any other service.

27 13. INSPECTION. City shall have the right to inspect Licensee's
28 use of Bixby Park at any time for the purpose of determining whether the farmers' market

1 is being conducted in compliance with the requirements of this License Agreement, the
2 law, regulations, codes and instructions. Licensee shall not hinder, impede, interfere with
3 or obstruct any such inspection.

4 14. TEMPORARY RELOCATION. City shall have a right to
5 temporarily relocate Licensee whenever it is necessary for the renovation of Bixby Park.
6 The City shall provide Licensee with at least ninety (90) days prior written notice.

7 15. TERMINATION. Either party may terminate this License
8 Agreement without cause by giving the other party thirty (30) days' prior written notice of
9 termination.

10 16. IMPROVEMENTS. Licensee and vendors shall not erect or
11 maintain any structure or improvements on Bixby Park without the prior written consent of
12 the City. Any structures or improvements erected by the Licensee or vendors shall
13 become the property of the City upon the revocation or termination of this License
14 Agreement. During the term of this License Agreement, Licensee and vendor shall be
15 responsible for maintenance of said structures or improvements.

16 17. NON-DISCRIMINATION. Licensee and vendors shall not
17 discriminate against any employee, applicant for employment, invitee or business visitor
18 in Licensee's or vendor's use of Bixby Park or sale of items, on the basis of race, color,
19 religion, national origin, sex, sexual orientation, gender identity, AIDS, HIV status, age,
20 disability, handicap, or Vietnam Era veteran status.

21 18. INSURANCE. As a condition precedent to the effectiveness of
22 this License, Licensee shall provide evidence of insurance equal to the following
23 insurance coverage:

24 (a) Commercial general liability insurance equivalent in scope to ISO
25 form CG 00 01 11 85 or CG 00 01 10 93 in an amount not less than \$1,000,000 per
26 occurrence and \$2,000,000 general aggregate. The coverage shall include but not be
27 limited to broad form contractual liability, cross liability, independent contractors liability,
28 and products and completed operations liability and shall not exclude coverage for abuse

1 and molestation defense. The City, its officers, employees and agents shall be named as
2 additional insureds by endorsement an endorsement equivalent in scope to ISO form CG
3 20 26 11 85, and this insurance shall contain no special limitations on the scope of
4 protection given to the City, its officers, employees and agents. This insurance shall
5 include as insureds all of Licensee's vendors and their products, which may include
6 anything within the normal scope of a farmers market as defined herein, including
7 mushrooms, homemade cosmetics, home-processed poultry or other meats, eggs, dairy,
8 and crafts, provided that all applicable federal, state, and local laws and permitting
9 procedures are being followed.

10 (b) Workers' compensation insurance as required by the California
11 Labor Code and employer's liability insurance in an amount not less than \$1,000,000 per
12 accident or occupational illness.

13 Any self-insurance program or self-insured retention must be separately
14 approved in writing by City's Risk Manager or designee and shall protect the City, its
15 officials, employees and agents in the same manner and to the same extent as they
16 would have been protected had the policy or policies not contained retention provisions.
17 Each insurance policy shall be endorsed to state that coverage shall not be reduced,
18 non-renewed, or canceled except after thirty (30) days prior written notice to City, and
19 shall be primary and not contributing to any other insurance or self-insurance maintained
20 by the City. Licensee shall notify the City within five (5) days after any insurance required
21 in this License has been voided by the insurer or canceled by Licensee.

22 Licensee shall require that all vendors maintain insurance in compliance
23 with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

24 Prior to entry on City-owned Property, Licensee shall deliver to City
25 certificates of insurance or self-insurance and required endorsements, including any
26 insurance required by vendors, for approval as to sufficiency and form. The certificates
27 and endorsements shall contain the original signature of a person authorized by that
28 insurer to bind coverage on its behalf. In addition, Licensee shall at least thirty (30) days

1 prior to expiration of this insurance furnish to the City evidence of renewal of the
2 insurance. City reserves the right to require complete certified copies of all policies of
3 insurance at any time. Licensee and vendors shall make available to the City, during
4 normal business hours, all books, records and other information relating to the insurance
5 required in this License.

6 Any modification or waiver of these insurance requirements shall only be
7 made by the City's Risk Manager or designee, in writing. The procuring or existence of
8 insurance shall not be construed or deemed as a limitation on liability or as full
9 performance with the indemnification provisions of this License.

10 Notwithstanding any other provision of this License, if Licensee or any
11 vendor fails to comply with this Section, the City may immediately revoke this License
12 and the permission granted by this License.

13 19. INDEMNIFICATION. Licensee shall indemnify and hold harmless
14 the City, its boards, commissions, their officials, and employees from and against any
15 and all liability, claims, demands, damage, causes of action, loss, proceedings, penalties,
16 costs and expenses (including but not limited to attorney's fees, court costs, and expert
17 and witness fees) (collectively "Claims" or individually "Claim") arising out of or related in
18 any manner related to this License, except for those arising out of the City's sole
19 negligence or intentional acts. Claims include by way of example but are not limited to:
20 Claims for property damage, personal injury or death arising, in whole or in part, from any
21 negligent act or omission of Licensee, its officers, employees, agents, invitees, vendors,
22 contractors, subcontractors, or anyone under Licensee's control (collectively
23 "Indemnitor"); Licensee's breach of this License; misrepresentation; willful misconduct;
24 and Claims by any employee of Indemnitor relating in any way to worker's compensation.
25 Independent of the indemnification duty and as a free-standing duty on the part of
26 Licensee, Licensee shall defend City and shall continue such defense until the Claim is
27 resolved, whether by settlement, judgment or otherwise. No finding or judgment of
28 negligence, fault, breach, or the like on the part of Indemnitor shall be required for the

1 duty to defend to arise. For purposes of the duty to defend, Claim shall include
2 allegations. Licensee shall give to the City notice of any Claim within ten (10) calendar
3 days. Likewise, the City shall notify Licensee of any Claim, shall tender the defense of
4 such Claim to Licensee, and shall assist Licensee, as may be reasonably requested, in
5 such defense.

6 20. ASSIGNMENT. Licensee shall not assign this License
7 Agreement without the written consent of the City's City Manager; nor shall Licensee in
8 any manner transfer or convey or grant any of the rights or privileges herein granted
9 without said written consent. Licensee shall not sublet Bixby Park or any part thereof nor
10 allow the same to be used or occupied by any other person or for any other use than that
11 specified herein.

12 21. NOTICE. Any notice required or desired hereunder shall be in
13 writing and personally served or deposited in the U.S. Postal Service, certified, return
14 receipt, postage prepaid, to the City at 333 West Ocean Boulevard, Long Beach,
15 California 90802, Attn: City Manager, and to Licensee at 5390 E. 8th Street, Long Beach,
16 California 90804.

17 Change of address shall be given in the manner provided for notices.
18 Notice shall be deemed received on the date shown on the certified, return receipt, or on
19 the date personal service is obtained, whichever occurs first.

20 22. NON-RESPONSIBILITY. City shall not be responsible for and
21 Licensee hereby waives all claims against the City for loss or damage by theft, fire, flood,
22 burglary, vandalism or any other cause of any of Licensee's or vendor's produce,
23 supplies, equipment and other property in, on or about Bixby Park, except to the extent
24 caused by City's gross negligence or misconduct.

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Exhibit A



Aerial of Premises

