

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

FITNESS PROVIDER PERMIT

**P - 00066**

THIS PERMIT is made and entered, in duplicate, as of May 1, 2015, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on May 19, 2015, by and between the CITY OF LONG BEACH ("City"), a municipal corporation and ANDREA RODRIGUES, AN INDIVIDUAL DBA YOGULATION MOVEMENT ("Permittee"), whose address is 3141 East Broadway, Long Beach, CA 90803 for the non-exclusive use of Bixby Park Annex for outdoor yoga classes and personal training.

1. ATTACHMENT "A". Attachment "A" to this Agreement is incorporated by this reference but shall be replaced during the term of this Permit if the City adopts new or different fees. The replacement shall be designated Attachment "A-1" and so forth and shall then be incorporated by this reference.

2. USE. Permittee shall conduct outdoor fitness classes and personal training at Bixby Park Annex ("Permit Area") as specified in Attachment "A". All Permitted Use of the Permit Area by the Permittee, its employees, and invitees shall be at their sole risk, cost, and expense.

3. TERM. The term of this Agreement shall begin on May 1, 2015 and end at 11:59 p.m. on April 30, 2018. Either Party may terminate this Permit at any time by providing thirty (30) days prior written notice. On termination or revocation of this Permit, Permittee shall quit and surrender possession of the permit area and remove its personal property from the Permit Area.

4. PERMIT FEE.

A. On May 1, 2016 ("Payment Due Date"), and every permit year thereafter on May 1st of each Permit year, Permittee shall pay an annual payment to the Department of Parks, Recreation and Marine ("Department"), of Three Hundred Fifty Dollars (\$350.00).

B. Permittee shall, within twenty (20) days following the

1 expiration, termination or revocation of this Permit, pay to the Department any and  
2 all sums due to the Department without any deductions whatsoever, except any  
3 sales tax payable to the State or other governmental agency.

4 C. City shall have the right to inspect and copy all books,  
5 ledgers, accounts and other records of Permittee relating to this Permit, after  
6 reasonable notice from City. City shall also have the right to conduct or obtain an  
7 audit of Permittee's books, ledgers, accounts and records related to this  
8 Agreement. The audit will be at City's expense, but Permittee shall pay its own  
9 costs in making the records available.

10 5. SCHEDULE. Upon execution of this Permit and/or as requested by  
11 the City, Permittee shall submit a comprehensive schedule of use of the Permit Area for  
12 approval by the City Manager or his designee. The submission shall be in writing and  
13 shall include all of the dates, times and locations of use of the permit area and additional  
14 sites. Permittee shall not deviate from the submitted schedule of use, or add additional  
15 dates, times or locations of use of the permit area, without the written consent of the City  
16 Manager or his designee. Any deviation from the submitted schedule of use shall be  
17 submitted in writing no later than thirty (30) days prior to the anticipated deviation. This  
18 Permit may be revoked if Permittee is found to have deviated from the submitted  
19 schedule of use, without the approval of the City Manager or his designee.

20 6. ADMONITION TO PARTICIPANTS. Permittee shall post signage  
21 approved by the City Manager or his designee informing all invitees and/or their legal  
22 guardians that participation in the Permitted Use is done at their own risk. Permittee shall  
23 make a verbal announcement of the same warning prior to each session of Permitted  
24 Use.

25 7. CLEANLINESS. Permittee, during their Permitted use of the Permit  
26 Area, shall place all waste of any kind in containers provided by the City and restore the  
27 Permit Area to its original state after each use. If the Permittee fails to maintain the  
28 Permit Area as required, the City will notify Permittee of such failure and, if Permittee fails

1 to correct the situation within thirty (30) days after notice, then the City may make the  
2 necessary correction and Permittee shall pay the cost of correction within thirty (30) days  
3 after receipt of an invoice from the City. Permittee hereby waives to the extent permitted  
4 by law any right to make repairs at the expense of the City.

5 8. COMPLIANCE WITH LAWS. Permittee during their Permitted Use  
6 of the Permit Area shall at all times comply with all laws, ordinances, rules and  
7 regulations and obtain permits from all federal, state or local government authorities  
8 having jurisdiction over the permit area and Permittee's activities on the permit area. In  
9 addition, Permittee shall at all times comply with the directives of the City Manager or his  
10 designee, as they pertain to Permitted Use of the Permit Area.

11 9. NO ASSIGNMENT. Permittee shall not assign this Permit or any  
12 interest in it or allow the transfer of the Permit, whether by operation of law or otherwise,  
13 nor delegate its duties hereunder. Any attempted assignment, transfer, or delegation  
14 shall be void and confer no rights whatsoever upon an assignee, transferee or delegate.  
15 If Permittee is adjudicated a bankrupt or becomes insolvent or any interest in this Permit  
16 is taken by virtue of attachment, execution, or receivership, the City may terminate this  
17 Permit on five (5) days notice to Permittee.

18 10. SIGNS AND ADVERTISING. All signs, advertising and/or  
19 promotional material placed in, on or at the Permit Area shall be approved, in advance, in  
20 writing by the City Manager or designee. Permittee shall pay all costs related to such  
21 signs, advertising or promotional material. If Permittee places any sign, advertising or  
22 promotional material that does not have the prior approval of the City Manager or  
23 designee, then the City may remove same without penalty or claim against the City, and  
24 Permittee shall immediately pay the cost of such removal on receipt of an invoice from  
25 the City, as an additional permit fee.

26 11. CONTROL OF PERMIT AREAS. The City shall have absolute and  
27 full control of the Permit Area. If necessary for the health, welfare or safety of the public  
28 or as a result of the termination or revocation of this Permit, the City shall have the right

1 to take possession thereof immediately. The City reserves the right to enter the Permit  
2 Area at any and all times including the times and days of Permittee's Permitted Use. City  
3 reserves the right to do any work at the Permit Area for the preservation, operation and  
4 maintenance of the Permit Area that it deems necessary. The City, whenever possible,  
5 will inform Permittee when such work will be done if it impacts Permittee's Permitted Use.

6 12. INDEMNITY. Except for the City's gross negligence or willful  
7 misconduct and to the fullest extent permitted by law, Permittee shall indemnify and hold  
8 harmless the City, its boards, commissions, and their officials, employees and agents  
9 (collectively in this Section "City") from and against any and all liability, claims, demands,  
10 damage, loss, causes of action, proceedings, penalties, costs and expenses (including  
11 reasonable attorney's fees, court costs, and expert and witness fees)(collectively  
12 "Claims" or individually "Claim"). Claims include by way of example but are not limited to:  
13 Claims for property damage, personal injury or death arising in whole or in part from any  
14 negligent act or omission of Permittee, its officers, employees or anyone under  
15 Permittee's control (collectively "Indemnitor"); Permittee's breach of this Permit;  
16 misrepresentation, willful misconduct; and Claims by any employee of Indemnitor relating  
17 to workers' compensation. Independent of the duty to indemnify and as a free-standing  
18 duty on the part of Permittee, Permittee shall defend City and shall continue such  
19 defense until the Claim (including allegations in a Claim) is resolved, whether by  
20 settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach,  
21 or the like on the part of Indemnitor shall be required for the duty to defend to arise. Each  
22 party shall promptly notify the other party of any Claim.

23 13. INSURANCE. Concurrent with the execution of this Permit and in  
24 partial performance of Permittee's obligations hereunder, Permittee shall procure and  
25 maintain the following insurance at Permittee's sole expense for the duration of this  
26 Permit, including any extensions or renewals thereof, from insurance companies that are  
27 authorized to write insurance in the State of California or from insurers listed on the CDI's  
28 List of Eligible Surplus Lines' Insurers (LESLI) that have a current rating of or equivalent

1 to A:VIII by A.M. Best Company:

2           A.     Commercial general liability insurance equivalent in coverage  
3           scope to ISO form CG 00 01 11 85 or 11 88 in an amount not less than One  
4           Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars  
5           (\$2,000,000.00) general aggregate. Such insurance shall include but is not limited  
6           to broad form contractual liability, personal and bodily injury, independent  
7           contractors liability, sexual molestation liability, and products and completed  
8           operations liability. The City of Long Beach, its officials, employees, and agents  
9           shall be added as additional insureds by endorsement equivalent in coverage  
10          scope to ISO form CG 20 26 11 85 and this insurance shall contain no special  
11          limitations on the scope of protection afforded to the City, its officials, employees,  
12          and agents.

13          B.     Personal accident insurance covering all participants in an  
14          amount not less than Ten Thousand Dollars (\$10,000.00) per person.

15          C.     "All Risk" property insurance in an amount sufficient to cover  
16          the full replacement value of Permittee's personal property and equipment on the  
17          premises. Such insurance shall be endorsed with a waiver of subrogation of any  
18          claims against the City, its officials, employees, and agents.

19          D.     Workers' Compensation insurance as required by the State of  
20          California and Employer's Liability insurance in an amount not less than One  
21          Million Dollars (\$1,000,000.00) per occurrence.

22                 In addition to the endorsements specified above, each insurance policy  
23          required herein shall provide by endorsement or by policy form: (i) that the insurance  
24          shall not be canceled, nonrenewed, or reduced in coverage or limits except after thirty  
25          (30) days prior written notice to City, (ii) that the insurance shall be primary and not  
26          contributing to any other insurance or self-insurance maintained by City, its official,  
27          employees, or agents, (iii) that the insurance shall apply separately to each insured  
28          against whom claim is made or suit is brought, except with respect to the limits of the

1 insurer's liability; and (iv) that the naming of more than one insured shall not, for that  
2 reason alone, extinguish any rights of one insured against another, subject to the  
3 Company's limits of liability.

4 Any self-insurance program, self-insured retention, or deductible must be  
5 approved separately in writing by City Risk Manager or designee and shall protect the  
6 City of Long Beach, its officials, employees, and agents in the same manner and to the  
7 same extent as they would have been protected had the policy or policies not contained  
8 such retention or deductible provisions.

9 Permittee shall deliver to City certificates of insurance and the required  
10 endorsements for approval as to sufficiency and form prior to commencement of this  
11 Permit. The certificates and endorsements for each insurance policy shall contain the  
12 original signature of a person authorized by that insurer to bind coverage on its behalf.  
13 City reserves the right to require complete certified copies of all said policies at any time.

14 Such insurance as required herein shall not be deemed to limit Permittee's  
15 liability relating to performance under this Permit. The procuring of insurance shall not be  
16 construed as a limitation on liability or as full performance of the indemnification and hold  
17 harmless provisions of this Permit.

18 Any modification or waiver of the insurance requirements herein shall be  
19 made only with the written approval of the City's Risk Manager or designee.

20 14. POSSESSORY INTEREST. This Permit may create a possessory  
21 interest subject to property taxation and Permittee may be liable for the payment of  
22 property taxes levied on such possessory interest. Permittee shall pay or cause to be  
23 paid, prior to delinquency, all taxes, assessments and other governmental and district  
24 charges that may be levied or assessed for buildings, improvements or property located  
25 on the Permit Area and upon possessory interests created by this Permit. Satisfactory  
26 evidence of such payments shall be delivered by Permittee upon demand therefore.

27 15. NOTICE. Any notice, demand, request, consent, or communication  
28 that either party desires or is required to give to the other party or any other person shall

1 be in writing and either personally delivered or deposited in the U.S. Postal Service, first  
2 class, postage prepaid, addressed to Permittee at the address first stated above and to  
3 the City at 2760 N. Studebaker Road, Long Beach, CA 90815 Attn: Director. Notice of  
4 change of address shall be given in the same manner as stated herein for other notices.  
5 Notice shall be deemed given on the date personal delivery is made or forty-eight (48)  
6 hours after deposit in the mail.

7           16. DEFAULT. Except where this Permit expressly states that the City  
8 may immediately revoke this Permit, the City may revoke this Permit if Permittee fails or  
9 refuses to comply with any term, condition or provision of this Permit after notice of such  
10 failure or refusal from the City Manager or designee. The acceptance of all or part of the  
11 payment of any permit fee after default shall not be deemed a waiver of any right to  
12 revoke this Permit on account of such default. Any waiver by the City or City Manager of  
13 a default shall be in writing and shall not be construed as or constitute a waiver of any  
14 subsequent default of the same or any other term, condition or provision of this Permit.

15           If this Permit is deemed a lease by a court of competent jurisdiction, then  
16 Permittee hereby waives any right of redemption under any existing or future laws in the  
17 event of removal from the permit areas. Permittee agrees that if the manner or method  
18 used by the City in revoking this Permit and removing Permittee from the permit areas  
19 gives to Permittee a cause of action for damages or in forcible entry and detainer, then  
20 the total amount of damages to which Permittee shall be entitled in any such action shall  
21 be One Dollar (\$1.00). Permittee agrees that this Section may be filed in any such action  
22 and that when filed it shall be a stipulation by Permittee fixing the total damages to which  
23 Permittee is entitled in such action.

24           17. NONDISCRIMINATION. During its Permitted Use of the Permit  
25 Area, Permittee and its employees shall not discriminate on the basis of race, religion,  
26 color, ancestry, sex, sexual orientation, sexual identity, gender identity, AIDS, AIDS  
27 relation condition, HIV status, age, national origin, handicap or disability.

28           18. HEALTH AND SAFETY. Permittee shall correct health and safety

1 deficiencies and violations of health and safety practices immediately and shall cooperate  
2 fully with the City Manager or designee in the investigation of accidents or incidents  
3 occurring in, on or at the Permit Area. In the event of injury to an invitee, Permittee shall  
4 see that the injured person receives prompt and qualified medical attention. If Permittee  
5 fails to correct unsafe or unhealthy conditions, which have led or, in the opinion of the  
6 City, could lead to injury, then the City Manager may immediately revoke this Permit.

7           19. NO WAIVER. The failure or delay by the City to insist on strict  
8 compliance with any term, condition or provision of this Permit shall not be deemed a  
9 waiver of any right or remedy that the City may have and shall not be deemed a waiver of  
10 any subsequent or other failure to comply with any term, condition, or provision of this  
11 Permit. The receipt and acceptance of all or a part of the payment of a delinquent permit  
12 fee shall constitute only a waiver of timely payment for the particular payment involved  
13 and shall not constitute waiver of any other failure to comply.

14           20. CLAIMS. The City, its officials, employees, boards, and  
15 commissions shall not be liable for and Permittee hereby waives all claims against the  
16 City, its officials, employees, boards, and commissions for loss, theft, or damage to  
17 equipment, furniture, trade fixtures, furnishings, records, and other personal property in,  
18 on or at the Permit Area, for loss or damage to Permittee's business, or injury to or death  
19 of persons in, on or at the Permit Area from any cause except to the extent caused by the  
20 gross negligence or willful misconduct of the City, its officials, employees, boards or  
21 commissions.

22           21. NO RELOCATION. Permittee agrees that nothing contained in this  
23 Permit shall create any right in Permittee for any relocation assistance or payment  
24 pursuant to the provisions of Title 1, Division 7, Chapter 16 of the California Government  
25 Code from the City on the expiration or revocation of this Permit.

26           22. RESTORATION. Permittee shall promptly notify the City of damage  
27 or destruction to the Permit Area and the date of same. Permittee shall promptly make  
28 proof of loss and proceed to collect all valid claims that Permittee may have against



1 insurers or others based on such damage or destruction. All amounts recovered as a  
2 result of said claims shall be used first for the restoration of the Permit Area. If existing  
3 laws do not permit restoration, then the City may revoke this Permit.

4           23. MISCELLANEOUS. This Permit shall be governed by and construed  
5 in accordance with the laws of the State of California. This Permit constitutes the entire  
6 understanding between the City and Permittee and supersedes all other agreements, oral  
7 or written, with respect to the subject matter herein. Revocation or termination of this  
8 Permit shall not affect rights or liability that accrued hereunder prior to such revocation or  
9 termination. This Permit shall not be construed or interpreted against either party as the  
10 drafter. This Permit is not intended or entered for the purpose of creating any benefit or  
11 right for any person or entity that is not a signatory to this Permit. If any term, condition  
12 or provision of this Permit is held by a court of competent jurisdiction to be invalid, void or  
13 unenforceable, the remainder of the Permit shall remain in full force and effect and shall  
14 in no way be affected, impaired, or invalidated. The various headings and numbers  
15 herein and the grouping of the provisions of this Permit into separate sections,  
16 paragraphs and clauses are for convenience only and shall not be considered a party  
17 hereof, and shall have no effect on the construction or interpretation of this Permit.

18           24. CONTINUATION. Termination or expiration of this Agreement shall  
19 not terminate the rights or liabilities of either party which accrued or existed during the  
20 term of this Agreement and prior to its termination or expiration.

21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN WITNESS WHEREOF, the parties have executed this Agreement with all formalities required by law as of the date first stated above.

ACCEPTED this 25, day of February, 2015<sup>16</sup>.

ANDREA RODRIQUES, an Individual dba YOGULATION MOVEMENT

Dated: 10/19/15, 2015

By: Andrea Rodriques

Title: Owner / founder

"Permittee"

CITY OF LONG BEACH, a municipal corporation

Feb. 25, ~~2015~~  
2016

By: T. Bill  
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

Assistant City Manager

"City"

Approved as to form on 2/11, 2015<sup>16</sup>.

CHARLES PARKIN, CITY ATTORNEY

BY: [Signature]  
Deputy

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



**ATTACHMENT A: PERMIT AREA  
(Bixby Park Annex)**

