

LICENSE AGREEMENT TO USE MARINE STADIUM PARKING LOT

32338

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 ("Marine Stadium Parking Lot Area") 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 May 18, 2010.

1. USE. Licensee shall use up to One Hundred (100) City-owned parking spaces, adjacent to the northwest end of Marine Stadium Parking Lot Area, or at an alternative location determine by the Director of Parks, Recreation and Marine for the sole purpose of conducting a certified farmer's market, and for no other purposes. The Licensee shall use the premises on Wednesdays, for the sale of fresh fruit and vegetables, eggs, cut flowers, decorative plants, seafood, honey and other items as approved by the Department of Parks, Recreation and Marine ("Director").

Each seller 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.

In its use of the Marine Stadium Parking Lot Area, Licensee and sellers shall not in any manner interfere with or impede persons holding local area vending permits. In addition, Licensee and sellers shall not interfere with or impede access for emergency vehicles and shall maintain at all times, one (1) lane, twenty (20) feet wide, through the Marine Stadium Parking Lot Area to allow travel and access by emergency vehicles.

2. TIME OF USE. Licensee shall begin setting up for the farmers' market on Wednesday no earlier than 1:00 p.m. and shall be off the premises by 9:00 p.m. The hours of operation may be extended subject to the approval of the Director.

1 3. INITIAL TERM. The initial term of this License Agreement shall
2 commence on January 1, 2011 and shall terminate on December 31, 2014. The term of
3 the License Agreement may be extended for up to two (2), one (1) year terms at the
4 discretion of the Director or his designee. The License Agreement may be terminated by
5 either party, at any time, with thirty (30) days' written notice.

6 4. FEE. Licensee agrees to pay to City quarterly for the rights and
7 privileges granted by this License Agreement a sum equal to one percent (1%) of the
8 gross receipts of any such farmers' market as mentioned in this License. Gross receipts
9 shall include the total sales price exclusive of tax of all goods sold without deduction or
10 set off. Gross receipts shall include sales for cash, credit, or services whether collected
11 or not. Gross receipts shall not include, or if included will be deducted (but only to the
12 extent they have been included), any sales and use taxes, transportation taxes, excise
13 taxes, franchise taxes, or other similar taxes which are added to the selling price,
14 separately stated, collected separately from the selling price or collected from customers.

15 Licensee shall pay fees within twenty (20) days of the calendar month
16 immediately following the close of each quarter in which any sales are made, during the
17 term of the License Agreement or any extensions thereof. "Quarter" as used herein shall
18 mean those periods within each calendar year ending on March 31, June 30, September
19 30, and December 31, whether or not consisting of three (3) months. The license fee
20 shall be accompanied by a financial statement showing in reasonable detail Licensee's
21 gross receipts for the preceding calendar month and a computation of the percentage fee
22 provided for herein. The monthly financial statement shall be certified to be correct by
23 Licensee.

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

26 5. COMPLIANCE. Licensee shall comply with all City, state and
27 federal laws, regulations, rules, codes, and instructions from the City's City Manager or
28 designee relating to the use of the Marine Stadium Parking Lot Area. Notwithstanding

1 anything to the contrary herein, failure to do so may result in immediate revocation or
2 suspension of this License Agreement. Licensee, and any sublicensees or other parties
3 with which it may deal with regard to this License, shall meet all requirements of the
4 California Health and Safety Code Sections 114345 through and including 114350.

5 6. PERMITS, LICENSES, AND TAXES. Licensee shall obtain, pay
6 for and carry or display, as required, all permits or licenses required by law, regulation, or
7 code for the use of the Marine Stadium Parking Lot Area, including but not limited to any
8 permits required by the City Health Department and any business licenses and shall
9 cause all sellers to obtain same. Licensee and sellers shall produce said permits or
10 licenses for inspection upon request of any police officer or other authorized
11 representative of the City. In addition, Licensee shall pay all taxes which may be levied
12 including possessory interest taxes.

13 7. STANDARDS OF SERVICE. Licensee and sellers shall conduct
14 business in a manner acceptable to City. Selling shall be done in an orderly, courteous
15 and lawful manner. Licensee shall correct safety deficiencies and violations of safety
16 practices immediately and shall cooperate fully with the City in the investigation of
17 accidents occurring on the Marine Stadium Parking Lot Area during any farmers' market.

18 8. NUISANCE. Licensee and sellers shall not use the Marine
19 Stadium Parking Lot Area nor sell any item in any manner that will create a nuisance or
20 unreasonable annoyance to the public. Licensee shall keep the Marine Stadium Parking
21 Lot Area in a safe, clean wholesome, sanitary condition; free from trash, garbage, rubbish
22 and litter. No substance constituting a fire hazard or material detrimental to the public
23 health shall be permitted or remain on the Marine Stadium Parking Lot Area.

24 9. MAINTENANCE. Licensee and sellers shall at their own cost
25 and expense provide all supplies, material and equipment necessary for use of the
26 Marine Stadium Parking Lot Area for a farmers' market and shall maintain them in a
27 clean and safe condition. Vendors at the farmers market shall use absorbent substances
28 to prevent or reduce oil droppings from vehicles. Licensee shall also maintain and clean

1 the Marine Stadium Parking Lot Area after each farmers' market to the condition of the
2 Marine Stadium Parking Lot Area immediately preceding the farmers' market. With the
3 exception of ordinary wear and tear, Licensee shall be liable for any and all loss, injury or
4 damage to the Marine Stadium Parking Lot Area resulting from the use of the Marine
5 Stadium Parking Lot Area and the sale of produce by Licensee, any seller, and their
6 employees, agents, invitees, or business visitors.

7 10. RESTROOMS. The Licensee shall be responsible for supplying
8 portable restroom facilities and will be responsible for all costs associated with the
9 restrooms.

10 11. PARKING. Customers of the farmers' market will be directed by
11 Licensee not to park in red curbed areas of the Marine Stadium.

12 12. SPECIAL EVENTS AND FILMING. Licensee recognizes that
13 City on occasion may issue Special Event and Filming permits for the Marine Stadium
14 Parking Lot Area. Licensee shall allow preparation for the special event or filming on the
15 Marine Stadium Parking Lot area and City shall notify Licensee at least thirty (30) days
16 prior to the date a special event and ten (10) days prior to the date a filming event will
17 occur.

18 13. SPECIAL EVENTS. City may issue Special Event Permits for
19 the Marine Stadium Parking Lot Area, but shall not issue said Permits on the day or days
20 designated in Section 2 hereof. Licensee shall allow preparation for the special events
21 on the Marine Stadium Parking Lot Area, provided that City notifies Licensee at least
22 ninety (90) days prior to the date on which a special event will occur.

23 14. UTILITIES. City shall provide water and electricity to the
24 Licensee at the Marine Stadium Parking Lot area. City shall not provide any other utilities
25 to Licensee, nor provide security, maintenance or any other service.

26 15. INSPECTION. City shall have the right to inspect Licensee's
27 use of the Marine Stadium Parking Lot Area at any time for the purpose of determining
28 whether the farmers' market is being conducted in compliance with the requirements of

1 this License Agreement, the law, regulations, codes and instructions. Licensee shall not
2 hinder, impede, interfere with or obstruct any such inspection.

3 16. TEMPORARY RELOCATION. City shall have a right to
4 temporarily relocate Licensee whenever it is necessary for the renovation of the Marine
5 Stadium Parking Lot Area. The City shall provide Licensee with at least ninety (90) days
6 prior written notice.

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

10 18. IMPROVEMENTS. Licensee and sellers shall not erect or
11 maintain any structure or improvements on the Marine Stadium Parking Lot Area without
12 the prior written consent of the City. Any structures or improvements erected by the
13 Licensee or sellers shall become the property of the City upon the revocation or
14 termination of this License Agreement. During the term of this License Agreement,
15 Licensee and seller shall be responsible for maintenance of said structures or
16 improvements.

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

22 20. INSURANCE. Licensee shall procure and maintain the
23 following insurance at Licensee's expense for the duration of this License Agreement
24 from an insurance company that is admitted to write insurance in the State of California
25 or from an authorized nonadmitted insurer that has a rating of or equivalent to A:VIII by A.
26 M. Best Company:

27 A. Commercial general liability insurance (equivalent in scope to
28 ISO form CG 00 01 11 85 or 11 88) in an amount not less than One Million Dollars

1 (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) general
2 aggregate. Such insurance shall include coverage for broad form contractual
3 liability, independent contractors' liability, and products and completed operations
4 liability. The City of Long Beach, its officials, employees, and agents shall be
5 added as additional insureds by endorsement (equivalent in coverage scope to
6 ISO form CG 20 26 11 85) with respect to liability arising from the use of the
7 Marine Stadium Parking Lot Area or the sale of produce by Licensee, its
8 volunteers, representatives, agents, employees, and officers. This insurance shall
9 be endorsed to provide cross liability protection, thirty (30) days prior written notice
10 of cancellation, nonrenewal or reduction in coverage, and primary and
11 noncontributing coverage to the City, its officials, employees, and agents.

12 B. Commercial automobile liability insurance (equivalent in scope
13 to CA 00 01 06 92) covering Auto Symbol 1 ("Any Auto") in an amount not less
14 than Five Hundred Thousand Dollars (\$500,000.00) per accident combined single
15 limit for bodily injury and property damage. Such policy shall be endorsed to
16 provide additional insured coverage to the City, its officials, employees, and
17 agents, and thirty (30) days prior written notice of cancellation, nonrenewal or
18 reduction in coverage, and primary and noncontributing coverage to the City, its
19 officials, employees, and agents.

20 Any self-insurance program, self-insured retention, or deductible must be
21 approved separately in writing by City and shall protect the City of Long Beach, its
22 officials, employees, and agents in the same manner and to the same extent as they
23 would have been protected had the policy or policies not contained such retention or
24 deductible provisions.

25 Licensee shall deliver to the City, certificates of insurance and the required
26 endorsements for approval as to sufficiency and form prior to commencement of this
27 License. The certificates and endorsements for each insurance policy shall contain the
28 original signature of a person authorized by that insurer to bind coverage on its behalf.

1 Licensee shall, at least thirty (30) days prior to expiration of such insurance, furnish City
2 with evidence of renewals. City reserves the right to require complete certified copies of
3 all said policies at any time.

4 Such insurance as required herein, shall not be deemed to limit Licensee's
5 liability relating to performance under this License. The procuring of insurance shall not
6 be construed as a limitation on liability or as full performance of the indemnification and
7 hold harmless provisions of this License.

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

10 21. INDEMNIFICATION. Licensee shall defend, indemnify and hold
11 harmless the City, its officials, employees and agents from and against any and all
12 claims, demands, damages, losses, liability, causes of action, penalties, fines,
13 proceedings, costs and expenses (including reasonable attorneys' fees) of any kind
14 arising from the alleged acts or omissions of Licensee, its officers, employees, agents,
15 volunteers, invitees or business visitors which alleged acts or omissions are connected in
16 any way with the use of the Marine Stadium Parking Lot Area or the sale of items at, on
17 or from the Marine Stadium Parking Lot Area.

18 22. ASSIGNMENT. Licensee shall not assign this License
19 Agreement without the written consent of the City's City Manager; nor shall Licensee in
20 any manner transfer or convey or grant any of the rights or privileges herein granted
21 without said written consent. Licensee shall not sublet the Marine Stadium Parking Lot
22 Area or any part thereof nor allow the same to be used or occupied by any other person
23 or for any other use than that specified herein.

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

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

4 24. NON-RESPONSIBILITY. City shall not be responsible for and
5 Licensee hereby waives all claims against the City for loss or damage by theft, fire, flood,
6 burglary, vandalism or any other cause of any of Licensee's or seller's produce, supplies,
7 equipment and other property in, on or about the Marine Stadium Parking Lot Area,
8 except to the extent caused by City's gross negligence or misconduct.

9 25. NO TITLE. Licensee acknowledges that, by this License
10 Agreement, Licensee and sellers do not acquire any right, title or interest of any kind in
11 the Marine Stadium Parking Lot Area. City shall have and retain absolute and full control
12 of the Marine Stadium Parking Lot Area.

13 26. REVOCATION, SUSPENSION. This License Agreement may
14 be revoked or suspended by the City's City Manager at any time that it is determined that
15 the Licensee or any seller has violated any conditions of this License Agreement or any
16 applicable code, law, rule or regulation, or that the City has evidence of unfair or bad faith
17 dealing with the public or with the City by Licensee or any seller, or evidence of any
18 action adversely affecting the health, welfare or safety of the public.

19 27. DEFAULT. In the event Licensee fails, neglects or refuses to
20 perform any of the conditions of this License or otherwise defaults in performance and
21 said default continues for a period of ten (10) days after notice thereof to Licensee from
22 the City of Long Beach, then the City of Long Beach may at its option declare this
23 License to be revoked. Any waiver by the City of Long Beach of a default shall not be
24 construed as, or constitute a waiver of, any subsequent default of the same or any other
25 term.

26 28. APPEAL. Licensee shall have the right to appeal the
27 revocation, suspension, or termination of this License Agreement to the City Council of
28 the City of Long Beach. Said appeal must be filed in writing within ten (10) days after

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 receipt by Licensee of notice of revocation, suspension or termination.

2 IN WITNESS WHEREOF, the parties have executed this License
3 Agreement on the respective dates set forth opposite their signatures.

4 LEE OSTENDORF, an individual

5
6 January 1, 2011

By Lee Ostendorf
President
Lee Ostendorf
Type or Print Name

8
9 "Licensee"

10 CITY OF LONG BEACH, a municipal
11 corporation

12 9.27, 2011

By [Signature] Assistant City Manager
City Manager

13
14 "City"

15 This Agreement is approved as to form on August 8, 2011.

16 ROBERT E. SHANNON, City Attorney

17 By: [Signature]
Deputy

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.



Marine Stadium Farmers Market and Parking Areas



0 50 100 150 200 250 Feet

