

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is entered into as of July 29, 2020 ("Effective Date") between the City of Lake Elsinore, a California municipal corporation ("City"), and ABC Tree Farms, LLC, an Oregon limited liability company ("Licensee"), with reference to the following facts:

A. City is the owner of certain real property located at 18614 Dexter Avenue, Lake Elsinore, California and further identified as APNs 377040024, 257040024, and 237040024 ("City Parcel").

B. Licensee has requested use of the City Parcel as a seasonal sales lot (the "Event") for up to 120 days per License Year (as defined herein).

C. City has agreed to provide to Licensee such a temporary license over the City Parcel, upon, and subject to the terms and conditions set forth in, this License Agreement.

NOW THEREFORE, based on the foregoing and the promises, covenants and undertakings contained in this License, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Licensees agree as follows:

1. License Term. The term of the License shall commence on July 29, 2020 and expire on June 30, 2023 (the "License Term"). The License Term may be extended for two additional one (1) year extensions periods at the sole discretion of the City Manager. Except as otherwise specifically stated in this License, references to the "License Term" shall include the original License Term and any extension, renewal or holdover thereof. A "License Year" is a period of twelve (12) consecutive calendar months commencing on July 1 of each year, provided, however, that the License Year 1 shall commence on July 29, 2020 and end on June 30, 2021.

2. Security Deposit and License Fee; Refund.

(a) Security Deposit and License Fee. From and after the Effective Date, Licensee shall pay to City during the License Term a Security Deposit and License Fee as provided herein, of which the License Fee shall be subject to a three percent (3%) annual increase. The annual License Fee and Security Deposit are comprised of the following sums:

License Year 1:	License Fee:	\$15,200.00
	Security Deposit:	\$2,000
License Year 2:	License Fee:	\$15,656.00
	Security Deposit:	\$2,000
License Year 3:	License Fee:	\$16,125.68
	Security Deposit:	\$2,000

License Year 4 (if exercised):	License Fee: Security Deposit:	\$16,609.45 \$2,000
License Year 5 (if exercised):	License Fee: Security Deposit:	\$17,107.73 \$2,000

Contemporaneously with the execution of this License and not later than September 1 of each License Year thereafter, Licensee shall deposit the above-referenced Security Deposit with the City to secure the faithful performance by Licensee all terms, covenants, and conditions of this License by Licensee to be kept and performed during the License Term, including, but not limited to the payment of the License Fee and performance of the maintenance obligation as set forth in Section 5. Promptly following the final Event of each License Year and if the Licensee has complied with the performance requirements set forth herein, the Security Deposit shall be refunded to the Licensee.

Contemporaneously with the execution of this License and upon the commencement of each License Year thereafter, Licensee shall pay the above-referenced License Fee, such License Fee to be paid in four equal installments on September 1, October 1, November 1 and December 1 of each License Year.

(b) Refund. In the event that Licensee is precluded from holding the Event or is otherwise required to discontinue the Event due to an law, directive or such other lawful order issued by the City, the County of Riverside, or the State of California relating to the COVID-19 pandemic, Licensee shall be relieved of any further performance obligations under this License for the remainder of the License Year and Licensee shall be entitled to a refund, on a pro rate basis, of any pre-paid License Fee. Licensee shall also be relieved of additional installment payment(s) of the License Fee for that License Year. Promptly following the termination of the Event as provided herein and if the Licensee has otherwise complied with the performance requirements set forth in this License prior to the early termination of the Event, the Security Deposit shall be refunded to the Licensee.

3. Community Contribution. In addition to the License Fee, Licensee shall provide (i) to the City goods and products available at the City Parcel during an Event in a retail amount not to exceed \$1,000 in each License Year; and (ii) to community organizations designated by the City goods and products available at the City Parcel during an Event in a retail amount not to exceed \$500 in each License Year.

4. Grant of Temporary License.

(a) City hereby grants to Licensee a temporary license ("Temporary License") to use the City Parcel during the License Term solely for the Event for no more than 120 days during the License Year. Licensee agrees to obtain (i) a City business license, and (ii) a "Temporary Use Permit(s)" from the Department of Community Development and pay all associated fees. Licensee also agrees to provide electricity and water and permit the site to be inspected by both the Fire Department and City Building Official. Licensee shall comply and shall cause the public to comply with all applicable federal, state and local laws, regulations and rules with respect to the use of the City

Parcel. Licensee shall not permit any noxious or offensive activity to be carried on upon any portion of the License Area, nor shall anything be done or maintained on the City Parcel which may be or become an annoyance or nuisance to the neighborhood. The Temporary License is subject to all liens, encumbrances, covenants, conditions, restrictions, rights, rights of way, dedications and other matters of title (whether or not of record) existing on the date of this License.

(b) City shall have the right to: (i) revoke this License and all other rights granted to Licensee due to the failure by Licensee to observe or perform any of the provisions of this License (an "Event of Default"), where such failure shall continue for a period of thirty (30) days after written notice of such Event of Default is received by Licensee from City; and (ii) terminate the License and all other rights granted to Licensee, without cause, upon giving Licensee not less than 30 days' advance written notice prior to the commencement of the License Year of the City's intention to terminate the License.

5. Subcontractors. The Licensee may assign, sublicense or otherwise allow occupancy or use of the City Parcel by another person/s or group only upon prior written approval by City which approval may be granted by the City Manager or designee. However, the cumulative use of the City Parcel per fiscal year may not exceed 120 days.

6. Maintenance of City Parcel.

(a) During the License Term, the Licensee shall set up the parking area and provide the circulation pattern per the plans submitted to and reviewed by the City Engineer. Licensee, at Licensee's expense, shall maintain or cause to be maintained (collectively, "Maintain" or "Maintenance"), City Parcel substantially as abated and improved as required by this License and otherwise in good order and condition, reasonable wear and tear expected. During the License Term, Licensee, at Licensee's expense, shall maintain in prominent locations on City Parcel adequate signage to enable safe ingress and egress for the public.

(b) Licensee further agrees to abate the City Parcel to the City's standards as may be necessary. Abatement includes, but is not limited to, (a) tree trimming, (b) removal of all existing debris on the City Parcel, and (3) replacement of any missing sections of chain link fence on the perimeter of the City Parcel, if any (which chain link fence shall remain in place following the termination of this License).

7. Liens. Licensees shall not suffer or permit to be filed or enforced against City Parcel any mechanics', laborers', materialmen's, contractors', subcontractors' or any other liens arising from the maintenance work, or any other work performed or caused to be performed by the Licensee as a result of the use of the City Parcel by the Licensee or the public. Licensee shall pay all such liens before any action is brought to enforce the same against City Parcel. City shall have the right to post and maintain on the City Parcel such Notices of Nonresponsibility as desired by City or as may be provided by law.

8. Indemnification; Waiver. Licensee agrees to indemnify and hold City and its employees, officers, directors, agents and contractors (collectively, "City's Representatives") harmless, and to defend City and the City's Representatives with counsel reasonably satisfactory to City, from and against any and all liabilities, losses,

actions, damages, obligations, judgments, costs and expenses (including, without limitation, attorneys' fees) (collectively, "Liabilities") which City or any of the City's Representatives may incur or suffer arising out of or in any manner connected with (i) the use of City Parcel by the Licensees or the public or (ii) the breach of or failure of Licensee to perform any of Licensees' covenants contained in this License.

9. Nonliability. To the fullest extent permitted by law, neither City nor any of the City's Representatives shall bear any responsibility for any Liabilities arising out of or in any manner connected with any person's use of City Parcel, and all persons using City Parcel do so completely at their own risk.

10. Insurance Requirements. Licensee, at Licensee's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

(a) Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City.

(b) General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

(c) Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

11. Amendment. This License may be amended or modified by an instrument in writing executed by Licensee and City.

12. Survival. The obligations under this License shall survive the expiration of the Temporary License and the License Term; provided, however, in no event shall Licensee have the right to use City Parcel after the expiration of the License Term nor shall the public have the right to use City Parcel after such time.

13. Miscellaneous.

(a) Construction. Headings in this License are for convenience only and are not part of this License. When the context so requires, words in the masculine, feminine or neuter gender shall include each other gender; and words in the singular or plural shall include each other. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this License. This License is executed and delivered in the State of California and shall be construed and enforced in accordance with and governed by the laws of the State of California.

(b) Severability. In the event any portion of this License shall be declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this License and the remaining part of this License shall remain in full force and effect, as fully as though such invalid, illegal and unenforceable portion had never been part of this License.

(c) Interest. Any amounts required to be paid by one party to the other party under this License shall bear interest from the date due until paid at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by applicable law.

(d) Attorneys' Fees. If any action is brought to enforce this License, the prevailing party(s) shall be entitled to recover all costs and expenses of the action including reasonable attorneys' fees.

(e) Entire Agreement. This License contains the entire agreement between the parties concerning the subject matter of this License and supersedes any and all other prior agreements, understandings, or negotiations concerning such subject matter.

(f) Enforcement. Enforcement of this License may be by any proceeding in law or in equity against any person or persons or entity or entities violating or attempting to violate any of the provisions of this License, and any party enforcing this agreement may seek to enjoin or prevent such violating party or parties from doing so, may seek to cause any violation to be remedied and/or to recover damages for any violation.

(g) Notices. All notices or other communications required or permitted under this License shall be in writing and shall be delivered personally or sent by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to City:	City of Lake Elsinore
	130 South Main Street
	Lake Elsinore, California 92530
	Attn: City Manager

If to Licensee: ABC Tree Farms, LLC
25 NW 23rd Place, #6
PMB 367
Portland, Oregon 97210
Attn: Jerry R. Klima, Jr.

Any party may, by notice to the other, designate a different address for notices which shall be substituted for that specified above. All notices and other communications given as provided in this paragraph shall be effective upon receipt.

(h) Counterparts. This License may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this License on the day and year set forth below.

“CITY”

“LICENSEE”

CITY OF LAKE ELSINORE, a municipal
corporation

ABC TREE FARMS, LLC

Grant Yates, City Manager

Jerry R. Klima, Jr., Sole Member

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

Risk Manager