

**FACILITY USE AGREEMENT
BETWEEN THE CITY OF CAPITOLA AND CAPITOLA BEACH FESTIVAL**

THIS FACILITY USE AGREEMENT ("Agreement") dated April 9, 2026, ("Effective Date") is made and entered into by and between the City of Capitola, a municipal corporation, ("City"), and the Capitola Beach Festival Association ("Beach Festival"). City and Beach Festival are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, City is the owner of real property located at 420 Capitola Avenue, Capitola, California 95010, in the County of Santa Cruz, State of California (the "Premises").

B. WHEREAS, Beach Festival is in need of a reliable meeting room to conduct regular meetings to plan and execute the Capitola Beach Festival special event; and

C. WHEREAS, it is the intent of the City to make its Community Room ("Facilities"), located within the Premises, available for use by the Beach Festival when not needed for City related business.

D. WHEREAS, the City Council finds that Beach Festival provides essential family and youth services and events that benefit the residents of the City; and

E. WHEREAS, the City Council has determined that providing space for planning these services and events serves a substantial public purpose.

NOW, THEREFORE, with regard to the above recitals and for good and sufficient consideration, the adequacy of which is hereby acknowledged, the Parties agree to the following:

AGREEMENT

1. **Term.** The term ("Term") of this Agreement shall run for three (3) years from the Effective Date set forth above, and will automatically renew for subsequent one (1) year periods unless terminated in accordance with section 2 of this Agreement.

2. **Termination.** Either Party may terminate this Agreement for any reason by ninety (90) days' advance written notice. If any actions by Beach Festival are creating a hazard or causing damage to the facilities, City may terminate this Agreement immediately. If the City Council adopts fees for the use of the Community Room during the term of this Agreement, the Agreement will automatically be terminated.

3. **Fees, Costs, and Charges.** None. In lieu of market-rate rent, Beach Festival will provide festival planning related services and the Capitola Beach Festival event to the public at no or low cost. The parties agree that the fair market value of these services meets or exceeds the value of the use of the Premises, and thus constitutes full and adequate consideration for this Lease.

4. **Beach Festival's Use of City's Premises.**

- a. City will make available to Beach Festival the Facilities for the purpose of conducting Beach Festival Meetings ("Meetings") on the second Monday of each month, plus the fourth Monday of September, from 6:30 p.m. until the conclusion of the meeting. If a conflict arises wherein the City needs to use the Facilities at the same time as the Beach Festival is scheduled to use the Facilities, City will have priority in using the Facilities. City agrees to provide the Beach Festival as much notice as practically possible so that the Beach Festival may notify its members of the change in venue in a timely manner. The organization may request use of the Facilities on other dates and times as needed, and the City may approve or deny such requests in its discretion. If the request is approved, City and Beach Festival agree that no further payment obligations will arise unless by separate agreement of the Parties. The Beach Festival may further use the Facilities for special meetings based on availability.
- b. City shall pay for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services for the Premises during the Term of this Agreement.
- c. City will provide Beach Festival a code to access the Facilities prior to the first meeting in May 2026.
- d. During its use of the Facilities, Beach Festival shall maintain the Facilities in a lawful, fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. Beach Festival shall not permit any waste or nuisance in or about the Facilities, nor store materials hazardous to health or safety of the public, nor shall Beach Festival permit the use of the Facilities for any illegal purposes at all times during the Term of this Agreement. After the conclusion of each Meeting, Beach Festival shall return the Facilities to the condition it was in prior to when the Meeting began.
- e. Should Beach Festival not maintain Facilities in a fully operable, safe, neat, clean, and sanitary condition, free from waste and debris, the City shall be entitled to additional payments from the Beach Festival to recover costs necessary to return the property to fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. Such costs shall be determined at City's sole discretion.
- f. The Beach Festival acknowledges this agreement does not include City staff/technical assistance to help set up or troubleshoot issues prior to or during meetings.

- g. Beach Festival shall report any personal injuries or property damage arising at any time during, and/or in any way connected with, Beach Festival's use or occupancy of the Facilities to City staff in writing and as soon as practicable.
- h. City will make available the following equipment and services for each Board Meeting:
 - i. Tables,
 - ii. Chairs, and
 - iii. Television

5. **Indemnification.** Beach Festival shall indemnify, defend, and hold harmless City and its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with Beach Festival's use or occupancy of the Facilities, unless solely caused by the active negligence or willful misconduct of City or its officers, employees, or agents.

6. **Insurance Requirements.**

- a. Beach Festival must hold adequate general liability insurance for bodily injury and property damage that applies to that person or group's use of the Facilities. The insurance should provide coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Proof of such insurance must be furnished upon request by City.
- b. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Beach Festival may meet its obligation in this section through equivalent self-insurance.

7. **Assignment; Subleases; Transfers.** Beach Festival shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of Beach Festival's interest in this Agreement or the Facility.

8. **Severability.** Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

9. **No Waiver.** The failure of either Party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults.

10. **Miscellaneous.**

- a. Beach Festival shall comply with all local, state, and federal laws and regulations related to the use of the Facilities. Beach Festival agrees to abide by all applicable federal and state accessibility standards and regulations.
- b. Each Party agrees that this Agreement is made and accepted on and subject to the condition that there be no discrimination against or segregation of any person or group of persons, on account of race, color, sex, sexual orientation, age, handicap, marital status, religion, nation origin or ancestry in the use, occupancy, tenure or enjoyment of the Facilities, nor shall any Party, or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the Facilities.
- c. Beach Festival shall not admit a larger number of individuals than can lawfully, safely, and freely move about the Facilities. In no event may Beach Festival admit a number of individuals than that permitted by the Fire Marshal for the Facilities.

11. **Applicable Law and Venue.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of California. Venue for any action filed with respect to the Agreement shall be in the courts of the County of Santa Cruz and all Parties agree to submit to the jurisdiction of said courts.

12. **Notices.** Should any notice be required, such notice shall be in writing and delivered either in person at the normal offices of the other party, or, in the alternative, may be given by depositing such notice in the United States mail, postage fully prepaid, and addressed to the parties as follows:

CITY OF CAPITOLA
420 Capitola Ave
Capitola, CA 95010
Attn: City Manager

CAPITOLA BEACH FESTIVAL ASSOCIATION
PO Box 501
Capitola, CA, 95010

13. **Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between the Parties with respect to use of the Facilities and supersedes and replaces any and all previous agreements entered into or/and negotiated between City and Beach Festival relating to the Facilities covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by City and Beach Festival. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by City and Beach Festival in writing.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Beach Festival have executed this Agreement as of the date first written above.

CITY OF CAPITOLA

**CAPITOLA BEACH FESTIVAL
ASSOCIATION**

Signature: _____

Signature: _____

Print Name: Jamie Goldstein, City Manager

Print Name: _____

Date: _____

Date: _____