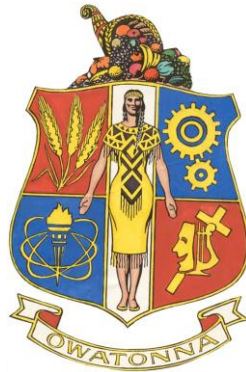


# THE CITY OF

Office of Public Works Director  
City Engineer



# OWATONNA

540 West Hills Circle  
Owatonna, MN 55060-4701  
Ph. (507) 774-7307  
FAX: (507) 444-4351

TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: KYLE SKOV, PUBLIC WORKS DIRECTOR AND CITY ENGINEER  
DATE: July 29, 2020  
SUBJECT: Limited Use agreement, Big Dream Organics, LLC.

Purpose

Approval of temporary limited use agreement with Big Dream Organics, LLC located at 216 Bridge Street.

Background:

Big Dream Organics is a new business located at 216 Bridge Street in Owatonna. The building is not accessible, and the owner has installed a temporary ramp within the public right of way. City staff met with the owner and explained that a limited use agreement was necessary for the ramp. They agreed to make a few changes to the construction of the ramp and to enter a temporary, 12-month, limited use agreement for the ramp. The ramp will be evaluated after the 12-month period.

Budget Impact:

None

Staff Recommendation:

Staff recommends approval.

# LIMITED USE AGREEMENT

**THIS LIMITED USE AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of July, 2020, by and between the City of Owatonna, a Minnesota municipal corporation (“Grantor”) and Big Dream Organics LLC (“Grantee”).

Grantee is a business owner and lessee of property depicted on the attached Exhibit A (“Grantee’s Property”). Grantee has installed a ramp that provides additional ease of access to Grantee’s Property. This ramp extends about four (4) feet onto the public sidewalk as depicted on the attached Exhibit B (“Grantor’s Public Property”). Grantor and Grantee have agreed that this ramp’s location and extension onto Grantor’s Public Property is permissible for a temporary time period in accordance with the terms of this Agreement.

Now therefore, in consideration of the covenants and promises to be performed in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. *Use of Grantor’s Public Property.* Grantor hereby permits Grantee use of Grantor’s Public Property for access to and from Grantee’s Property via the ramp. Grantee’s use will be deemed to extend to all Grantee’s customers, vendors, visitors, clients, maintenance workers, etc. Grantor hereby waives and releases all claims Grantor may have against Grantee for the ramp’s extension onto the public sidewalk.
2. *Term; Extension.* This Agreement’s term is twelve (12) months from the date of the last signature added to this Agreement. This Agreement’s term may be extended by the parties’ mutual written consent.
3. *Maintenance and Repair.* Grantee shall maintain and repair the ramp during this Agreement’s term. Grantee is responsible for the costs of removal of any refuse or waste materials from Grantor’s Public Property. Grantee cannot use Grantor’s Public Property for storage, handling, transportation, or disposal of any hazardous substance, hazardous waste, pollutant, or contaminant as those terms are defined in 42 U.S.C. Section 9601, et. seq. (“CERCLA”) or Minnesota Statutes Chapter 115B (“MERLA”). In the event Grantee fails to maintain and repair the ramp during this Agreement’s term, Grantor may revoke Grantee’s use in accordance with this Agreement’s terms.
4. *Liens and Encumbrances.* Grantee cannot permit or suffer any liens or encumbrances to be placed against Grantor’s Public Property or engage in any activity that would cause or result in the placement of any liens or encumbrances against it.
5. *Liability; Indemnification.* Notwithstanding anything to the contrary in this Agreement, Grantor, its officers, agents, and employees will not be liable or responsible in any manner to Grantee, Grantee’s successors or assigns, Grantee’s contractor or subcontractors, material suppliers, laborers, or to any other person or persons for any claim, demand, damage, or cause of action of any kind or character arising out of or by reason of the execution or performance of this Agreement, nor can Grantee make any claim against Grantor for or on account of any injury, loss, or damage resulting from Grantor’s Public Property or its use; provided however, that Grantor, its officers, agents, and employees will be liable for any and all negligent, reckless, or malicious acts that occur on Grantor’s Public Property, the ramp in its entirety, or within Grantee’s Property.
6. *Insurance.* Grantee shall acquire and maintain property and liability insurance in at least the sum of \$1,500,000. Grantee shall provide Grantor a current certificate of liability insurance or policies of insurance for all insurance coverage. Such certificate of liability insurance or policies of insurance must

contain a statement that such policies of insurance will not be cancelled or amended unless sixty (60) days written notice is provided to Grantor. Grantee shall name Grantor as an additional insured on such policies.

7. *Taxes.* Grantee will be responsible for all real estate taxes and installments on special assessments that are due and payable on Grantee's Property, if any.
8. *Assignment.* The rights granted to Grantee in this Agreement cannot be transferred or assigned without Grantor's prior written consent.
9. *No Damages; No Relocation Benefits.* Grantee understands and acknowledges that Grantor is willing to enter into this Agreement and carry out its obligations only because Grantee has agreed it will make no claim for damages or relocation benefits upon termination of this Agreement or pursuant to any other agreement with Grantor. Specifically, and without limitation of the foregoing, Grantee understands that upon the expiration or other termination of this Agreement, Grantor has no obligation to provide Grantee with other routes for access to Grantee's Property.
10. *No Property Interest.* This instrument is not an easement or a lease, does not create a landlord-tenant relationship, and nothing in this Agreement will be deemed to create any property interest other than as expressed in this Agreement.
11. *Notice.* Any notice required under this Agreement will be deemed "given" upon hand delivery or three (3) days after prepaid posting in the U. S. Mail whichever first occurs. Notices must be delivered or mailed to the following addresses, or to such other address as a party may designate by notice to the other party:

If to Grantee:

Big Dream Organics LLC  
216 West Bridge Street  
Owatonna, MN 55060

with a copy to:

Hartman Law Office  
137 S. Broadway Avenue, Suite 2  
Albert Lea, MN 56007

If to Grantor:

City of Owatonna  
ATTN: City Administrator  
540 West Hills Circle  
Owatonna, MN 55060

with a copy to:

Mark Walbran  
Walbran & Furness  
140 East Main Street  
Owatonna, MN 55060

12. *Discrimination Provision.* Grantee, in the use of Grantor's Public Property, will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, or national origin.
13. *Waiver.* The waiver by Grantor or Grantee of any breach of any term of this Agreement will not be deemed a waiver of any prior or subsequent breach of the same term or any other term of this Agreement.
14. *Entire Agreement; Modification.* This Agreement, together with any exhibits that are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning this Agreement. This Agreement may be modified or amended only by court order or by a writing executed by all parties under the provisions of this Agreement.
15. *Headings.* Any headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and will not be used in the construction and interpretation of this Agreement.
16. *Severability.* If any part of this Agreement is held invalid or unenforceable, it will not affect the validity or enforceability of the remaining parts of this Agreement, provided that such invalidity or unenforceability does not materially prejudice either party under the remaining parts of this Agreement. This Agreement will be construed as if the invalid or unenforceable provision or application had never been contained in it or prescribed by it.
17. *Choice of Law; Venue.* This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement will be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
18. *Public Data.* This Agreement and the information related to it are subject to the Minnesota Government Data Practices Act, Minnesota Statutes, and Chapter 13, together which presume that data collected by Grantor is public data unless classified otherwise by law.
19. *Relationship of Parties.* Nothing contained in this Agreement will be deemed to create a partnership, association, or joint venture between Grantor and Grantee, or to create any other relationship between the parties other than that of Grantor and Grantee.
20. *Compliance with Laws.* Grantee agrees to abide by and conform to all laws, rules, and regulations, including future amendments controlling or affecting the use of Grantor's Public Property.
21. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.
22. *Attorney Fees.* Each party agrees to pay its own costs and expenses including attorney fees in the drafting and review of this Agreement.

*The remainder of this page is intentionally left blank; signature page to follow.*

**GRANTOR  
CITY OF OWATONNA**

**GRANTEE  
BIG DREAM ORGANICS LLC**

\_\_\_\_\_  
By: Thomas A. Kuntz  
Its: Mayor

\_\_\_\_\_  
By: Jerry Collins  
Its: Owner

\_\_\_\_\_  
By: Kris M. Busse  
Its: City Administrator

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2020, by Jerry Collins, Chief Manager of Big Dream Organics LLC.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2020, by \_\_\_\_\_, the Mayor, on behalf of the City of Owatonna, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2020, by \_\_\_\_\_, the City Administrator, on behalf of the City of Owatonna, a Minnesota municipal corporation.

\_\_\_\_\_  
Notary Public