

LICENSE AGREEMENT
CITY OF FULLERTON,
PARKS AND RECREATION DEPARTMENT
AND
FULLERTON CERTIFIED FARMERS' MARKET, INC.

THIS LICENSE AGREEMENT, dated May 16th, 2023 by and between the City of Fullerton, a California municipal corporation, ("CITY"), and Fullerton Certified Farmers' Market, Inc., a California non-profit corporation, ("FM)."

WHEREAS, the CITY is desirous of facilitating a diverse services to the citizens of Fullerton; and

WHEREAS, the CITY recognizes that FM has long provided a community-building event by providing fresh, local/regional produce and healthy food options from local farmers and vendors since 1981 through the operation of a farmer's market (the "Operation").

WHEREAS, the CITY has provided FM the use of a portion of park space for its Operation since 1981 and the parties now desire to move the FM Operation to the Fullerton Community Center.

NOW, THEREFORE, in consideration of mutual promises, covenants, and conditions hereinafter set forth, the parties agree as follows:

1. CITY grants FM a non-exclusive license to use a portion of the Fullerton Community Center parking lot at 340 W. Commonwealth Avenue for the Operation, subject to the hours and obligations set forth in this License Agreement. The area licensed shall consist of a portion of the Fullerton Community Center parking lot at 340 W. Commonwealth Avenue. as the Specific area to be licensed shall be mutually agreed upon by the parties and a depiction thereof attached to this Agreement as Exhibit A (the "Licensed Area").
2. FM's license shall include non-exclusive access to and use of the Fullerton Community Center restrooms during the Operation.
3. FM shall hold the CITY harmless for any and all losses of or damage to FM property, regardless of cause. FM acknowledges and agrees that CITY shall not provide insurance to cover said losses of or damage to FM property.
3. FM shall conduct its Operation and all related activities only in the Licensed Area.
4. The term of this Agreement and the license granted herein shall commence on July 1, 2023, and continue until expiring on June 30, 2025. This Agreement may be extended for one additional two-year period upon mutual written agreement of both parties. The City Manager is authorized to approve an extension on behalf of the City.

CITY or FM may terminate this Agreement at any time without cause upon written notice no less than one hundred and twenty (120) days prior to the termination date.

5. FM's Operation is allowed to use the Licensed Area every Wednesday from 8:00 am to 1:00 pm. Change of said hours must be approved in writing by the Deputy Director of Parks and Recreation.

6. An approved traffic plan, provided by CITY, shall be adhered to by FM during Wednesday Operation operating hours.
7. FM shall submit a year-end financial statement to CITY for annual review in October of each year.
8. CITY shall provide routine maintenance to the Licensed Area. FM shall pay for all improvements or changes necessary to the Licensed Area or the Fullerton Community Center for the Operation.
9. FM shall provide a staff person to set-up and remove all signs and equipment necessary for the Operation.
10. FM shall be responsible for any damage done to the Licensed Area or the Fullerton Community Center as a result of its Operation and shall pick-up all litter created as a result of FM's Operations.
11. CITY shall coordinate with FM for appropriate identification signage, subject to approval by the Deputy Director of Parks and Recreation.
12. FM shall pay \$60 per week to the CITY in consideration of the License granted herein. The CITY shall invoice FM monthly for these fees.
13. FM shall provide CITY with names, addresses, and phone numbers of the Board of Directors.
14. FM will donate 100% of all revenues above and beyond the commercially reasonable and expected costs required to operate the Operation to the Parks and Recreation Department's Secret Pal program. FM's costs include donations to the following community organizations:
 - First Presbyterian (FM donates 50 pounds of oranges per week for First Presbyterian to feed the homeless on the weekend).
 - Local schools and nonprofits (FM donates approximately \$1,000-\$2,000 annually in coupons for shopping at FM – Farmers turn in coupons in place of cash to FM as payment).

The CITY shall invoice FM annually for these fees.

15. FM agrees that no improvement shall be erected, placed upon, operated or maintained on or in the Licensed Area without prior written consent of the CITY. Nor shall any FM Operations be conducted or carried on in violation of any laws, regulations, order of loss, bylaws, or ordinances of any governmental agencies having jurisdiction.
16. FM shall provide a project coordinator and will coordinate with the Parks and Recreation Supervisor in charge for all activities at the FM Operation. FM shall also provide all staff or volunteers necessary for its Operation.
17. FM shall be solely responsible for all of its volunteers. FM shall only provide programs that are approved by the Parks and Recreation Supervisor when they want to provide programs other than those approved in this Agreement. At the sole discretion of the Parks and Recreation

Supervisor, these programs may be approved and the proper space allocated. If a dispute arises, a final decision shall be made by the Parks and Recreation Supervisor.

18. All funds collected by FM programs shall be the property of FM and will be its sole responsibility. CITY shall not be responsible for bills, invoices, or other costs incurred by FM. FM agrees to keep all books and records required by its funding sources and to abide by all contractual agreements to CITY and its own subcontractors.

19. FM agrees to forward all suggestions and/or complaints in writing regarding operations to the Parks and Recreation Supervisor responsible for the Licensed Area. Likewise, the Parks and Recreation Department Supervisor shall forward all complaints and/or suggestions in writing to FM.

20. It is the responsibility of FM to obtain and maintain all necessary permits from the appropriate County or State agencies.

21. FM does hereby acknowledge and agrees that FM is not an employee of the CITY. Except as may be specifically provided herein, neither CITY nor any of its employees shall have any control over the manner in which FM or any of FM's officers, employees, agents or volunteers conducts its activities. FM warrants not to, at any time or in any manner, represent that FM, or any of FM's officers, employees, agents or volunteers, are in any manner officers, employees, or agents of CITY. FM does hereby acknowledge and agree that FM, its officers, employees, agents and volunteers are not entitled to any of the rights or benefits of employment with the CITY, including but not limited to, Workers' Compensation benefits.

22. FM agrees to defend, indemnify, and hold harmless, the CITY, its elected officials, officers, agents, employees, and volunteers, from all loss, cost, and expense arising out of any liability or claim of liability, for personal injury, bodily injury to persons, contractual liability, or damage to property sustained or claimed to have been sustained arising out of or in connection with FM's use of the Licensed Area and its activities and operations, and those of FM's vendors, contractors, employees and volunteers as described herein, whether or not such activity or operation is authorized. Further, FM shall pay for any and all damage to the property of the CITY arising from said activities or operations, and shall waive all rights of subrogation against the CITY. Notwithstanding the foregoing, FM's obligation to indemnify the CITY shall not apply to the extent of and in proportion to the CITY's sole active negligence or willful misconduct.

23. FM shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the operations or activities hereunder by FM, their agents, representatives, employees or subcontractors. FM shall provide current evidence of the required insurance in a form acceptable to the CITY, and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless provisions contained in this Memorandum of Understanding, or the extent to which FM may be held responsible for payments of damages to persons or property.

A. Minimum Scope and Limits of Insurance

1. Commercial General Liability Insurance. FM shall maintain commercial general liability insurance in a form at least as broad as ISO from #CG 00 01, with a limit of not less than \$1,000,000 or each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement, or shall be twice the required occurrence limit.
2. Workers' Compensation and Employers' Liability Insurance. FM shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than \$1,000,000 each accident.

B. Deductibles and Self-Insured Retentions

Any deductible must be declared to and approved by the CITY.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

1. Commercial General Liability. The CITY, its elected or appointed officials, officers, employees and volunteers, are to be covered as additional insureds with respect to the operations and activities of FM or FM's use of the Licensed Area. The coverage shall contain no special limitations on the scope of its protection afforded to the CITY, officials, officers, employees, and volunteers.
2. Commercial General Liability. This insurance shall be primary insurance as respects the CITY, its officials, officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, employees, and volunteers shall be in excess of this insurance and shall not contribute with it.
3. Workers' Compensation and Employers' Liability Insurance. Insurer shall waive the right of subrogation against CITY, its officials, officers, employees, and volunteers for work done on behalf of the CITY.
4. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days prior to written notice by certified mail, return receipt requested, has been given to the CITY.

D. Acceptability of Insurers

All required insurance shall be placed with the insurers acceptable to the CITY with a current BEST's rating of no less than A, Class VII. Workers' Compensation Insurance may be placed with the California State Compensation Insurance Fund. All insurance shall be licensed by or hold admitted status in the State of California. At the sole discretion of the CITY, insurance provided by non-admitted or surplus carriers with a minimum

BEST's rating of no less than A- Class X may be accepted if FM evidences the requisite need to the sole satisfaction of the CITY.

E. Verification of Coverage

FM shall furnish the CITY with certificates of insurance which bear original signatures of authorized agents and which reflect insurers' names, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, FM shall furnish copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by the CITY before work commences. The CITY reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first written above.

James Moreno
President Fullerton Certified Farmers' Market

Date

Eric Levitt
City Manager of Fullerton

Date

ATTEST:

APPROVED AS TO FORM:

Lucinda Williams, City Clerk

Richard D. Jones, City Attorney