

MEMORANDUM OF UNDERSTANDING  
CITY OF FULLERTON  
PARKS AND RECREATION DEPARTMENT  
AND  
FULLERTON CERTIFIED FARMERS' MARKET, INC.

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), dated for identification this 15<sup>th</sup> day of June, 2021, is entered by and between the City of Fullerton, a California municipal corporation, hereafter referred to as "CITY," and Fullerton Certified Farmers' Market, Inc., a California non-profit corporation, hereinafter referred to as "FM."

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

WHEREAS, CITY recognizes that FM has provided a long-term community building event by providing fresh, local/regional produce and healthy food options from local farmers and vendors since 1981; and

WHEREAS, CITY has provided FM a portion of park space for its operations since 1981 and desires to provide FM space at the Fullerton Community Center to continue its operations pursuant to the terms and conditions of this MOU.

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

1. CITY shall provide space for the operations of FM to the Fullerton community. Space shall consist of a portion or portions of Fullerton Community Center parking lot at 340 W. Commonwealth Avenue as mutually agreed upon by the parties in writing ("Designated Area(s)").
2. For the purpose of providing services under this MOU, FM has joint use of Fullerton Community Center restrooms and a portion of parking area during its operations in the Designated Area(s) pursuant to this MOU.
3. FM shall conduct activities only in the Designated Area(s) assigned at Fullerton Community Center parking lot.
4. The term of this MOU shall be for a period beginning July 1, 2021 through June 30, 2023. FM may seek renewal of this MOU on a two-year basis. CITY or FM may terminate this MOU at any time upon serving notice in writing one hundred and twenty (120) days prior to the termination date.
5. FM shall operate every Wednesday from 8:00 am -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 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 for routine maintenance of the Designated Area(s). FM shall pay for all improvements or changes necessary to Fullerton Community Center for the operation of FM.
9. FM shall provide a staff person to help set-up and remove all signs and equipment necessary for operation of FM.
10. FM shall be responsible for any damage to the City's property as a result of its operations, and shall pick-up all litter created as a result of FM's operations.
11. CITY shall coordinate FM appropriate identification signage approved by the Deputy Director of Parks and Recreation.
12. FM shall pay \$60 per week to CITY for use of the Designated Area(s). CITY shall bill the FM monthly for these fees.
13. FM agrees to provide CITY with names, addresses, and phone numbers of its Board of Directors.
14. FM will donate 100% of all appropriate revenues above and beyond reasonable and expected costs required to operate the farmer's market. FM 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 balance of the FM revenues will be donated to the Parks and Recreation Department's Secret Pal program. CITY shall bill FM annually for these funds.

15. FM agrees that no improvement shall be erected, placed upon, operated or maintained on City property without prior written consent of CITY. FM also agrees that its operations will be conducted or carried on in accordance with any laws, regulations, or requirements of any governmental agencies having jurisdiction.
16. The Parks and Recreation Department shall coordinate with FM all activities at the farmer's market. FM shall provide a project coordinator and will coordinate with the Parks and Recreation Supervisor in charge. FM shall also provide staff or volunteers necessary for its specific operations.
17. It is agreed that the use of volunteers is necessary to the operation of FM's programs. FM shall be 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 MOU. At the 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 or 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 site. 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 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 activities and operations and those of FM's vendors, contractors, employees and volunteers, 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 operation, and shall waive all rights of subrogation against the CITY.

23. FM shall procure and maintain throughout the duration of this Memorandum of Understanding, 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 MOU, 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. 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.

FULLERTON CERTIFIED  
FARMERS' MARKET, INC.

CITY OF FULLERTON

  
James Moreno  
President

\_\_\_\_\_  
Steve Danley  
Acting City Manager

6/09/2021  
Date

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Lucinda Williams, City Clerk

APPROVED AS TO FORM:

 for  
\_\_\_\_\_  
Richard D. Jones, City Attorney