

RESOLUTION NO. 2018-032

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING AN AGREEMENT FOR FARMERS' MARKET MANAGEMENT WITH AGRICULTURAL COMMUNITY EVENTS FARMERS MARKETS

WHEREAS, the City of Rohnert Park Municipal Code Title 3 Chapter 3.04 provides that the City's purchasing functions shall be governed by the City's purchasing policy, and;

WHEREAS, the current Farmers' Market management agreement expired on December 31, 2017; and

WHEREAS, consistent with the Purchasing Policy, proposals were solicited from eleven potential farmers' market operators; and

WHEREAS, proposals were due on January 26, 2018 and two proposals were received by the Community Services Manager; and

WHEREAS, Agricultural Community Events Farmers Markets (ACEFM) was determined to be the only eligible proposer; and

WHEREAS, staff recommends authorizing and approving an agreement with Agricultural Community Events Farmer's Markets for managing a seasonal farmers market; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby authorize the execution of an agreement for farmers' market operation to the most responsive proposer, Agricultural Community Events Farmers Markets.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to take all actions necessary to effectuate this agreement, which is attached hereto and incorporated by this reference as Exhibit A, including the execution of documents pertaining to the same for and on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED this 13th day of March, 2018.

CITY OF ROHNERT PARK


Pam Stafford, Mayor

ATTEST:


JoAnne M. Buergler, City Clerk

Attachment: Exhibit A

AHANOTU: Aye BELFORTE: Aye MACKENZIE: Absent CALLINAN: Aye STAFFORD: Aye
AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

EXHIBIT A

LICENSE AGREEMENT FOR FARMERS' MARKET OPERATION

THIS LICENSE AGREEMENT FOR FARMERS' MARKET OPERATION ("Agreement") is entered into as of the ___ day of March, 2018 ("Effective Date") by and between the CITY OF ROHNERT PARK ("City"), a California municipal corporation, and Agricultural Community Events Farmers Market ("Licensee"), a California non-profit corporation.

RECITALS

WHEREAS, City desires to have a qualified Licensee operate a seasonal certified farmers' market at the City Center Plaza; and

WHEREAS, Licensee hereby warrants to the City that Licensee is skilled and able to manage and operate a certified farmers' market; and

WHEREAS, City is willing to provide a non-exclusive, revocable license to Licensee for use of those portions of the City Center Plaza, further defined herein, in exchange for the Licensee operating a certified farmers' market under the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. Coordination.

A. City. The City Manager or his/her designee, shall represent City for all purposes under this Agreement. The Community Services Manager is hereby designated as the Project Manager. The Project Manager shall supervise the progress and execution of this Agreement.

B. Licensee. The Licensee shall assign Kelly Smith, Executive Director to have overall responsibility for the operation and execution of this Agreement for Licensee.

3. Licensee Obligations

A. Licensee Activities. Subject to such policy direction and approvals as the City through its staff may determine from time to time, Licensee shall perform the activities, namely the operation of a certified farmers' market, set out in the "Scope of Activities" attached hereto as Exhibit 1 (hereafter the "Activities") and incorporated herein by reference.

B. Time of Performance. Licensee shall undertake its activities upon receiving a fully executed agreement from City and obtaining and delivering the required insurance coverage, and satisfactory evidence thereof, to City.

C. Standard of Quality. City relies upon the professional ability of Licensee as a material inducement to entering into this Agreement. All work performed by Licensee under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Licensee's field of expertise.

4. City Grant of License.

A. License Area. City hereby grants to Licensee, its employees and approved vendors, a revocable, non-exclusive license ("License") to use that certain area shown outlined on the plan of attached Exhibit 2 (the "License Area") for the sole purpose of operating a certified farmers' market in accordance with the Scope of Activities (subject to the terms and conditions set forth herein) and for no other use or purpose. This License does not constitute an estate or interest in real property and is merely a conditional, limited right to enter upon the License Area to perform the Scope of Activities. Licensee shall not operate a market on any other property controlled by City other than the License Area. The License Area may be modified by City at its sole discretion. For the duration of the Term of the Agreement as set forth in section 7, Licensee shall have the right to use the License Area only during the following days and hours: Fridays, commencing the first Friday in June and ending the last Friday in August, between 2:30pm and 9:30pm. All costs associated with the operation of the certified farmers' market shall be the responsibility of Licensee and shall in no way be borne by the City.

B. Condition of License Area. Licensee accepts the License Area in its "AS IS" condition "WITH ALL FAULTS" and Licensor shall not be required to make any alterations, improvements or repairs therein or thereon. Licensee hereby waives any and all rights, and Licensor expressly disclaims, any expressed or implied warranties, concerning the condition of the License Area. Licensee shall not make any changes to the License Area without first securing City's written consent, which may be withheld in City's sole discretion.

C. Damage to Licensee or Licensee's Property. City shall not be liable to Licensee for any loss, injury or other damage to Licensee or to Licensee's property, or the property of Licensee's vendors, in or about the License Area or the Property from any cause (including defects in the License Area or Property or electrical utility conduits used to furnish electrical service to the License Area, if any; fire, explosion or other casualty; or acts of other licensees, vendors, or guests on the Property). Licensee hereby waives all claims against City and its officers, directors, employees and agents for any such loss, injury or damage and the cost and expense of defending against claims relating thereto, excluding that caused by the City's sole negligence or willful misconduct. Notwithstanding any other provision of this Agreement to the contrary, in no event shall City be liable to Licensee for any punitive or consequential damages or damages for loss of business by Licensee.

D. Repairs. Licensee shall, at its sole expense, repair and/or replace any landscaping, improvements, or other City property at and around the site of License Area damaged as a result of the Licensee's operations and/or the actions of its vendors.

E. Protection of Property. Licensee shall practice all due diligence to protect the property of the City, including but not limited to, the License Area.

F. Assignment, Subletting and Change in Use. Licensee shall not transfer or assign the License granted hereunder and shall not sublet, license, permit or suffer any use of the License Area other than as set forth in this Agreement.

G. Maintenance. Licensee, at its own expense, shall keep the License Area in a clean and sanitary condition. Licensee shall ensure that any litter, garbage, and compostable or recyclable materials is removed at the conclusion of each day that it operates a market. Upon expiration or termination of this Agreement, Licensee shall return the License Area to City in as good a condition as of the Effective Date, less reasonable wear and tear. No boxes, barrels, litter or rubbish in any form shall be kept, piled, or stored in the License Area. If Licensee fails to correct any unsanitary condition within 24 hours after being notified by City or another governmental agency with jurisdiction, then City may enter such areas and remedy the condition or conditions at the expense of Licensee. In such event, City may also terminate this Agreement.

H. Rights Limited to Revocable License. Both parties acknowledge the relationship is not of landlord and tenant, easement grantor and easement grantee, or any other relationship.

5. Compensation and Method of Payment.

A. Compensation. In exchange for the License, Licensee shall pay the City 15% of the monthly gross receipts from its operation of the farmers' market, or a total lump sum of \$2,400 for each calendar year, whichever is greater, for use of the License Area and reimbursement of City incurred costs in conjunction with the operation of the farmers' market. City shall not provide any form of compensation to Licensee.

B. Timing of Payment. Licensee shall submit itemized monthly reports and shall make payment, in full, within thirty (30) days after approval of the reports by the Project Manager.

C. Taxes. Licensee shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the activities to be performed by Licensee.

D. No Overtime or Premium Pay. Licensee shall receive no premium or enhanced pay for work normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work performed during non-standard business hours, such as in the evenings or on weekends. Licensee shall not receive a premium or enhanced pay for work performed on a recognized holiday. Licensee shall not receive paid time off for days not worked, whether it is in the form of sick leave, administrative leave, or for any other form of absence.

E. Litigation Support. Licensee agrees to testify at City's request if litigation is brought against City in connection with Licensee's activities.

6. Amendment to Scope of Activities. City shall have the right to amend the Scope of Activities within the Agreement by written notification to the Licensee. Licensee shall not perform any activities exceeding the Scope of Activities without prior written authorization from the City.

7. Term. This Agreement shall commence upon its execution by both parties and shall continue for three (3) years with the option to renew the agreement for two (2) additional years upon mutual agreement of both parties. The Agreement shall remain in full force and effect until completed, amended pursuant to Section 22, or otherwise terminated as provided herein.

8. Inspection. Licensee shall furnish City with every reasonable opportunity for City to ascertain that the activities of Licensee are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the Project Manager's inspection and approval. The inspection of such activities shall not relieve Licensee of any of its obligations to fulfill the Agreement as prescribed.

9. Ownership of Documents. Title to all work papers compiled by the Licensee under the Agreement shall be vested in City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Data prepared or obtained under the Agreement shall be made available, upon request, to City without restriction or limitations on their use. (Except as stated in section 20.D. regarding Licensee not being liable for such use.). Licensee may retain copies of the above-described information but agrees not to disclose or discuss any information gathered, discussed or generated in any way through this Agreement without the written permission of City during the term of this Agreement, unless required by law.

10. Employment of Other Consultants, Specialists or Experts. Licensee will not employ or otherwise incur an obligation to pay other consultants, specialists or experts for services in connection with this Agreement without the prior written approval of the City.

11. Conflict of Interest.

A. Licensee covenants and represents that neither it, nor any officer or principal of its firm, has, or shall acquire any investment, income, business entity, interest in real property, or other interest, directly or indirectly, which would conflict in any manner with the interests of City, hinder Licensee's performance under this Agreement, or be affected in any manner or degree by Licensee's performance hereunder. Licensee further covenants that in the performance of the Agreement, no person having any such interest shall be employed by it as an officer, employee, agent, or subcontractor without the express written consent of the City. Licensee agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of interest, with the interests of the City in the performance of the Agreement.

B. Licensee is not a designated employee within the meaning of the Political Reform Act because Licensee:

(1) will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and

(2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation, or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

12. Liability of Members and Employees of City. No member of the City and no other officer, elected official, employee or agent of the City shall be personally liable to Licensee or otherwise in the event of any default or breach of the City, or for any amount which may become due to Licensee or any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

13. Indemnity. To the fullest extent permitted by law, Licensee hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, elected officials, employees, agents, and volunteers from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any acts, errors, or omissions of Licensee, its officers, employees, agents, and subcontractors undertaken pursuant to this Agreement excepting liabilities due to the sole negligence or willful misconduct of City. The City has no liability or responsibility for any accident, loss, or damage to any work performed under this Agreement whether prior to its completion and acceptance or otherwise. Licensee's duty to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code § 2778. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Licensee under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Licensee and shall continue to bind the parties after termination/completion of this agreement. This indemnification shall be regardless of and not in any way limited by the insurance requirements of this Agreement. This provision shall survive the termination of this Agreement.

14. Licensee Not an Agent of City. Licensee, its officers, employees and agents shall not have any power to bind or commit the City to any decision.

15. Independent Contractor. It is expressly agreed that Licensee, in the performance of any work and services agreed to be performed by Licensee, shall act as and be an independent contractor and not an agent or employee of City; and as an independent contractor, Licensee shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Licensee hereby expressly waives any claim it may have to any such rights.

16. Compliance with Laws.

A. General. Licensee shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Licensee represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for Licensee to perform the Activities in accordance with this Agreement. Licensee shall secure all permits and licenses as needed from the Sonoma County Department of Health Services as required for the legal operation of a certified farmers' market and any adjacent area in which nonagricultural products may be sold. Licensee shall maintain a City business license. The City is not responsible or liable for Licensee's failure to comply with any or all of the requirements contained in this section.

B. Workers' Compensation. Licensee certifies that it is aware of the provisions of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Licensee certifies that it will comply with such provisions before commencing performance of the Agreement and at all times in the performance of the Agreement.

C. Prevailing Wage. Licensee and Licensee's subcontractors (if any) shall, to the extent required by the California Labor Code, pay not less than the latest prevailing wage rates to workers and professionals as determined by the Director of Industrial Relations of the State of California pursuant to California Labor Code, Part 7, Chapter 1, Article 2. Copies of the applicable wage determination are on file at the City's office of the City Clerk.

D. Injury and Illness Prevention Program. Licensee certifies that it is aware of and has complied with the provisions of California Labor Code § 6401.7, which requires every employer to adopt a written injury and illness prevention program.

E. City Not Responsible. City is not responsible or liable for Licensee's failure to comply with any and all of its requirements under this section and Agreement.

F. Waiver of Subrogation. Licensee and Licensee's insurance company agree to waive all rights of subrogation against City, its officers, elected officials, employees, agents and volunteers for losses paid under Licensee's workers' compensation insurance policy which arise from the work performed by Licensee under this Agreement.

17. Confidential Information. All data, documents, discussions or other information developed or received by or for Licensee in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the City, or as required by law.

18. Assignment; Subcontractors; Employees

A. Assignment. Licensee shall not assign, delegate, transfer, or convey its duties, responsibilities, or interests in this Agreement or any right, title, obligation, or interest in or to the same or any part thereof without the City's prior written consent. Any assignment without such approval shall be void and, at the City's option, shall immediately cause this Agreement to terminate.

B. Subcontractors; Employees. Licensee shall be responsible for employing or engaging all persons necessary to perform the activities of Licensee hereunder. No subcontractor of Licensee shall be recognized by the City as such; rather, all subcontractors are deemed to be employees of the Licensee, and Licensee agrees to be responsible for their performance. Licensee shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control. If any employee or subcontractor of Licensee fails or refuses to carry out the provisions of this Agreement or appears to be incompetent or to act in a disorderly or improper manner, that employee or subcontractor shall be discharged immediately from the work under this Agreement on demand of the Project Manager.

19. Insurance. Without limiting Licensee's indemnification provided herein, Licensee shall comply with the requirements set forth in Exhibit 2 to this Agreement.

20. Termination of Agreement; Default.

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City upon 5-days' written notice to Licensee.

B. In the event of termination of this Agreement, City shall be entitled to the compensation for the use of its property as set forth in Section 5.A, in the following manner:

(1) If market operations are completed for the calendar year, 15% of the monthly gross receipts from its operation of the farmers' market, or a total lump sum of \$2,400 for each calendar year, whichever is greater; or

(2) If market operations have not been completed for the calendar year, 15% of the monthly gross receipts for such calendar year.

C. If Licensee fails to perform any of its obligations under this Agreement within the time and in the manner herein provided or otherwise violate any of the terms of this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice. In such event, City shall be entitled to recover the amount of damages, if any, sustained by City by virtue of the breach of the Agreement by Licensee, in addition to the compensation set forth in the paragraph above.

D. In the event this Agreement is terminated, Licensee shall not be entitled to any form of compensation.

E. Upon termination of this Agreement with or without cause, Licensee shall turn over to the City Manager immediately copies of studies, computations, and other data, whether or not completed, prepared by Licensee or its subcontractors, if any, or given to Licensee or its subcontractors, if any, in connection with this Agreement. Such materials shall become the permanent property of the City. Licensee shall be entitled to retain copies of such documents and shall not be required to erase all electronic backup copies or data. As stated above in section 9, Licensee's working papers remain the property of Licensee. Licensee, however, shall not be liable for the City's use of incomplete materials nor for the City's use of complete documents if used for other than the project contemplated by this Agreement.

21. Suspension. The City shall have the authority to suspend this Agreement and the services contemplated herein, wholly or in part, for such period as it deems necessary due to unfavorable conditions or to the failure on the part of the Licensee to perform any provision of this Agreement.

22. Merger; Amendment. This Agreement constitutes the complete and exclusive statement of the agreement between the City and Licensee and shall supersede all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Licensee. All provisions of this Agreement are expressly made conditions.

23. Interpretation. This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the ground that said party was solely or primarily responsible for drafting the language to be interpreted.

24. **Litigation Costs.** If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the court in such litigation shall award reasonable costs and expenses, including attorneys' fees, to the prevailing party. In awarding attorneys' fees, the court will not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses, and attorneys' fees paid or incurred in good faith.

25. Time of the Essence. Time is of the essence of this Agreement.

26. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

If to City: City Clerk
City of Rohnert Park - City Hall
130 Avram Avenue
Rohnert Park, CA 94928

If to Licensee: Kelly Smith
Agricultural Community Events Farmers Markets
PO Box 923
San Anselmo, CA 94979

27. Licensee's Books and Records.

A. Licensee shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City and all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Licensee's address indicated for receipt of notices in this Agreement.

28. Agreement Binding. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

29. Equal Employment Opportunity. Licensee is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment

opportunity. Licensee will not discriminate against any employee or applicant for employment because of race, age, sex, creed, color, sexual orientation, marital status or national origin. Licensee will take affirmative action to ensure that applicants are treated during such employment without regard to race, age, sex, creed, color, sexual orientation, marital status, or national origin. Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

30. City Not Obligated to Third Parties. The City shall not be obligated or liable hereunder to any party other than the Licensee.

31. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

32. Severability. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

33. Exhibits. The following exhibits are attached to this Agreement and incorporated herein by this reference:

- A. Exhibit 1: Scope of Activities
- B. Exhibit 2: Insurance Requirements
- C. Exhibit 3: License Area

34. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

35. News Releases/Interviews. All Licensee and subcontractor news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by the City.

36. Applicable Law; Venue. This Agreement shall be construed and interpreted according to California law. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Sonoma, California.

37. Authority. Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.

38. STATEMENT OF ECONOMIC INTEREST. If City determines Licensee comes within the definition of Licensee under the Political Reform Act (Government Code §87100), Licensee shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with the Clerk of the City of Rohnert Park disclosing Licensee and/or such other person's financial interests.

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

CITY OF ROHNERT PARK

LICENSEE

By: _____
City Manager
Date: _____

By: _____
Title: _____
Date: _____

Per Resolution No. 2018-_____ adopted by
the Rohnert Park City Council at its meeting of
February 27, 2018

APPROVED AS TO FORM:

By: _____
City Attorney

By: _____
City Clerk

EXHIBIT 1

SCOPE OF ACTIVITIES

Agriculture Community Events Farmers Markets (ACEFM) Obligations:

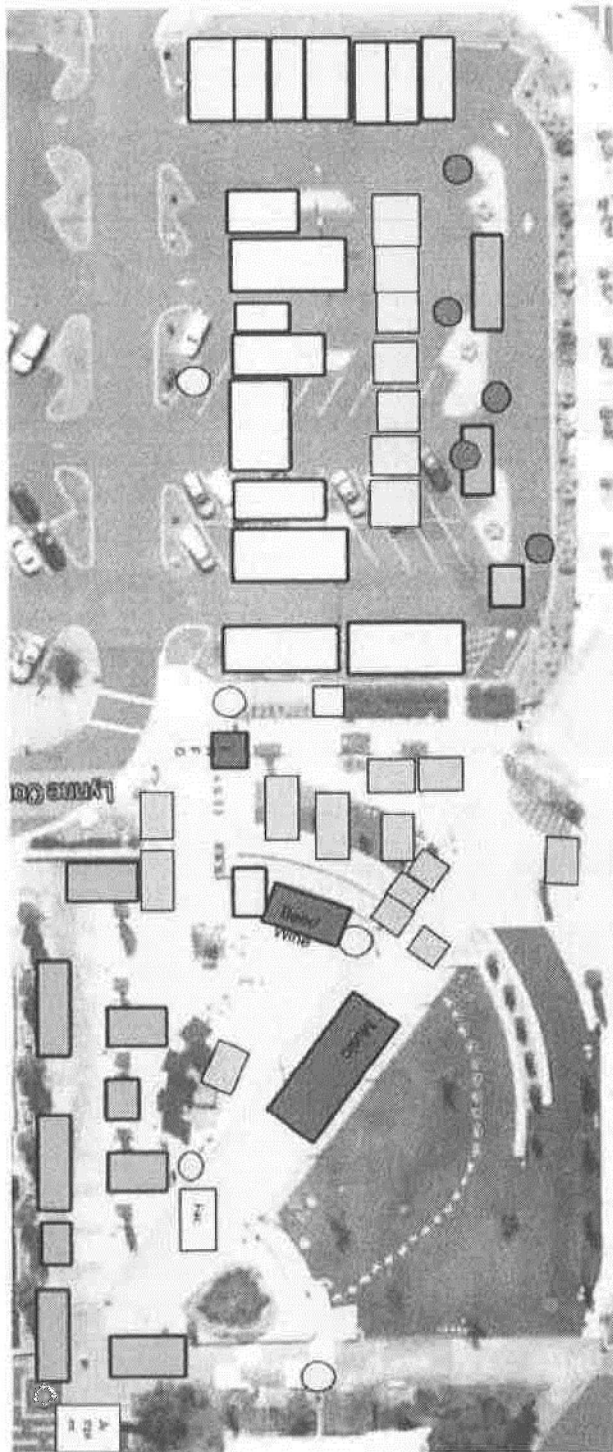
1. ACEFM shall for a period of three (3) years operate a seasonal market:
 - a. Seasonal market will run in concurrence with the Party on the Plaza, June through August annually
 - b. The hours of operation of the Markets shall be Friday 5:00-8:00
 - c. The market will be located at the City Center Plaza at the License Area depicted in Exhibit 2. This location may be subject to change at a later date at the discretion of the City, which will provide written notice of the change of location.
2. ACEFM shall recruit, coordinate with and secure vendors for the market. To the extent feasible, ACEFM shall give Rohnert Park businesses first priority for participation in the Market. A minimum quantity of certified vendors will be set at 20% of market vendors or an estimated 10 – 14 certified vendors. The remaining vendors shall be a combination of farmers, food purveyors, fish mongers, hot food vendors, arts and crafts, and/or non-profit organizations, for a total of 50 to 70 vendors combined.
3. ACEFM shall be responsible for all marketing materials, and planning and execution of the Markets with the goal of establishing a highly visible and viable alternative market that provides quality products and services from and to the community.
4. ACEFM shall be responsible for establishing and collecting fees from vendors. ACEFM shall return 15% of gross profit from the market to the City of Rohnert Park, with a minimum return of \$2,400 per year or 15% whichever is greater. Payment shall be made by ACEFM to the City on a monthly basis, net 30 days.
5. ACEFM shall staff the market with a qualified Market Manager that remains on site for the duration of the event along with enough support staff to safely and effectively operate the Markets.
6. ACEMF's operation of the the market shall include, but not be limited to the following activities:
 - a. Notification of surrounding business of event schedule and parking coordination.
 - b. Designation and enforcement of market rules and standards for vendors and attendees. ACEMF shall provide City with a copy of said rules and standards and any amendments thereof, which shall be subject to approval by the City. ACEMF shall also work cooperatively with the City to modify the market as requested to minimize concerns of affected neighbors and/or to improve the overall operation of the market.
 - c. Report to the City at the earliest opportunity any problems or concerns regarding market operations and repair and replace at its sole expense any damaged landscaping, irrigation systems, sidewalks, roadway, lighting or other improvements caused by ACEFM or vendors.
 - d. Solicitation and confirmation of vendors for all events, as well as filling vacancies.

- e. Set-up, take down and trash collection and disposal in City approved containers.
 - f. Provision of a portable toilet during events and coordination with library for restroom access.
 - g. Coordination with the public library to accommodate any library special events that require use of parking lot.
 - h. Provision of way finding and directional signage to and from the market.
 - i. Provision of all equipment and resources necessary for operation of the market including but not limited to signage, barricades and an information booth.
 - j. Provision of updated contact info for the Market Manager to the City in the event of changes.
 - k. Participation in periodic meetings with City staff to provide requested information.
 - l. Documentation and evaluation of the success of the market as requested by the City through various methods including, but not limited to customer surveys and customer counts at the market, as well as financial records and comparisons.
7. ACEFM shall comply with all applicable laws and regulations, including requirements set forth in the Request for Proposal and Rohnert Park Municipal Code. ACEFM shall secure and maintain at all times all licenses and permits required by local, state and federal law for the legal operation of the Markets.
 8. Changes to ACEFM's Rules and Regulations for the market shall be subject to approval by the City.

City of Rohnert Park Obligations:

1. City shall, consistent with applicable rules and regulations, issue applicable permits and approve ACEMF's use of the License Area at the City Center Plaza for the market.
2. Provide ACEMF with event support by providing access to electrical outlets, provision of trash receptacles, and regularly maintaining the parking lot used for the market.
3. Provide ACEMF with marketing support by providing access to the Activity Guide, use of City website advertising, and posting to community bulletin boards.

EXHIBIT 2 – License Area



Map - year round Fridays

Key

- ☉ = garbage
- = tables/chairs
- ☐ = Restrooms
- ☐ = hot food booths
- ☐ = packaged food booths
- ☐ = Art Booths
- ☐ = agriculture booths
- ☐ = Commercial

ACEFM-Rohnert Park CFM June - August 5p-8p Map
 PO Box 113
 Kenwood, CA 95452
 415-999-5635

EXHIBIT 3

INSURANCE REQUIREMENTS

Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Licensee agrees to amend, supplement or endorse the existing coverage to do so. Any insurance proceeds available to City in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to City. Licensee shall maintain the following types and amounts of insurance during the term of Agreement:

General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

Business Auto Coverage on ISO Business Auto Coverage form CA 0001 including symbol 1 (Any Auto) or equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 (One Million Dollars) per accident. If Licensee owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee's employees will use personal autos in any way on this project, Licensee shall provide evidence of personal auto liability coverage for each such person.

Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 (One Million Dollars) per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage's. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Licensee, subcontractors or others involved in the performance of activities under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$2,000,000 (Two Million Dollars) per occurrence.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with an A.M. Best's rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Licensee. Licensee and City agree to the following with respect to insurance provided by Licensee.

1. Licensee agrees to have its insurer endorse the general liability and automotive liability coverage required herein to include as additional insureds the City, its officers, elected officials, employees, agents, and volunteers using standard ISO endorsement No. CG 20 10 or an approved equivalent.

If completed operations coverage is excluded, the policy must be endorsed to include such coverage. Licensee also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Licensee, or Licensee's employees, or agents, from waiving the right of subrogation prior to a loss. Licensee agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. The worker's compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, elected officials, employees, agents, and volunteers for losses paid under the terms of this policy which arise from the work performed by the named insured for the City.
4. All insurance coverage and limits provided by Licensee and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
6. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any Licensee or subLicensee.
7. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.
8. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Licensee's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at City option.
9. Certificate(s) are to reflect that the insurer will provide 30 days' notice to City of any cancellation of coverage. Licensee agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
10. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Licensee or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to City.

11. Licensee agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Licensee agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
12. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
15. Licensee acknowledges and agrees that any actual or alleged failure on the part of City to inform Licensee of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.
16. Licensee will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.
17. Licensee shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Licensee's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.
18. The provisions of any workers' compensation or similar act will not limit the obligations of Licensee under this agreement. Licensee expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its officers, elected officials, employees, agents, and volunteers.
19. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. 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 limiting or all-inclusive.

20. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
21. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
22. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Licensee for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
23. Licensee agrees to provide immediate notice to City of any claim or loss against Licensee arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

CERTIFICATE OF LICENSEE

I, HEREBY CERTIFY that I am the Executive Director, and a duly authorized representative of Agricultural Community Events Farmers Markets, whose address is PO Box 923, San Anselmo, California 94979 and that neither I nor the above firm I here represent has:

- a) Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Licensee) to solicit to secure this Agreement.
- b) Agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
- c) Paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Licensee) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

Except as here expressly stated (if any);

A

I acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

Date

Signature