

**LICENSE AGREEMENT FOR THE TEMPORARY OPERATION OF
A FARMER'S MARKET ON CITY-OWNED PROPERTY**

This non-exclusive License Agreement is made and entered into by and between the **CITY OF SUGAR LAND**, a home-rule city located in Fort Bend County, Texas ("City"), and the **FORT BEND CHAMBER OF COMMERCE**, a Texas nonprofit corporation ("Licensee").

RECITALS:

WHEREAS, a weekly farmer's market (the "Event") is currently held at the Imperial Market Development in Sugar Land, Texas; and

WHEREAS, due to ongoing construction and other activities at the Imperial Market Development the weekly Event needs to be temporarily relocated; and

WHEREAS, Licensee desires to license the use of a portion of the Imperial Park Recreation Center parking lot located at 234 Matlage Way, Sugar Land, Texas 77478 (the "Licensed Premises") from the City for the purpose of holding the weekly Event until such time as the Imperial Market Development is operational and construction is complete; and

WHEREAS, the City desires to provide Licensee with a non-exclusive license to use the Licensed Premises for the weekly Event; and

NOW THEREFORE, for the consideration and on the terms, provisions, and conditions hereinafter set forth, the City and Licensee hereby agree as follows:

AGREEMENT:

1. The recitals set forth above are adopted and incorporated into this License Agreement.

2. **Grant of License; Premises.**

A. The City hereby grants to Licensee a non-exclusive license to use the Licensed Premises for the sole purpose of operating the weekly Event. The Licensed Premises includes all portions of the Imperial Park Recreation Center ("IPRC") parking lot that are generally open for use by the public for the purpose of parking, save and except for 37 spaces reserved for IPRC users only. The Licensed Premises and the 37 IPRC reserved spaces are as shown on Exhibit "A" attached hereto and incorporated by reference. Licensee is also granted non-exclusive use of the IPRC patio area, covered walkway, restrooms, and external power outlets. Use of the Licensed Premises must not block ingress and egress to the IPRC. Licensee hereby agrees to, and shall, use the Licensed Premises to hold the weekly Event only as contemplated by this License Agreement.

B. The rights herein granted to Licensee are not exclusive and the City hereby reserves for itself, its successor and assigns, the right to use the Licensed Premises or allow any other person to use the Licensed Premises for any purpose or purposes whatsoever, provided such


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use does not unreasonably interfere with any rights granted to Licensee hereunder.

3. **Term; Scheduling.**

A. The term of this License Agreement shall be month-to-month, commencing on the Effective Date. This License Agreement shall automatically renew on the 1st of each month under the then-current terms, unless City or Licensee notifies the other of its intention not to renew at least fifteen (15) days prior to the expiration of the then-current term.

B. Use of the Licensed Premises by Licensee during the term of this License Agreement shall be each Saturday from 7:00 a.m. to 2:00 p.m. (the "Operating Hours"). These times are inclusive of set-up and break-down time for the Event and its vendors.

C. Licensee agrees that lightning, flooding or other severe weather is likely to present a hazard or danger to patrons. City and Licensee agree that in the case of severe weather, access to the Licensed Premises may be restricted at the sole discretion of the City. Severe weather refers to dangerous meteorological phenomena with the potential to cause damage to persons or property.

4. **License Fee.**

Licensee will pay the City \$1.00 as consideration for each weekly use of the Licensed Premises by Licensee for the Event.

5. **Termination.**

A. This License Agreement shall automatically terminate as of such date that the Imperial Market Development is operational and construction is complete, without further action required by the City or Licensee.

B. Either party may terminate this License Agreement at any time during the then current term, with or without cause, by giving the other party written notice at least fifteen (15) days prior to the termination date.

C. If any part of the Licensed Premises is so damaged or destroyed by Licensee's use so that it may not be used for its intended purpose, as determined by the City, this License Agreement will immediately terminate on the date of the damage or destruction.

6. **Damage to Licensed Premises.**

Licensee shall immediately notify the City of any and all damages resulting from, arising out of, or caused to the Licensed Premises, the IPRC (or any and all property situated thereon or therein), or any City-owned property or equipment, including, but not limited to, damages to pavement or landscaping which is caused by Licensee, its authorized representatives, agents, and invitees, including Event vendors and attendees. Licensee agrees to pay and to be liable and solely responsible for any and all damages to the Licensed Premises, the IPRC (or any and all

property situated thereon or therein), or any City-owned property or equipment, resulting from or relating in any way to the use of the Licensed Premises by Licensee or its authorized representatives, agents, and invitees, including Event vendors and attendees. The costs and the repair of all such damages and such repairs shall be completed in a timely manner acceptable to City. The foregoing shall survive any termination of this License Agreement for a period of one (1) year from the date of termination.

7. Representations; Condition of Licensed Premises.

A. THE CITY MAKES NO WARRANTY OR REPRESENTATION TO LICENSEE OF ANY KIND (EXPRESS OR IMPLIED) REGARDING THE SUITABILITY OF OR COMPLIANCE WITH APPLICABLE LAWS BY THE LICENSED PREMISES, OR ANY PORTION THEREOF, FOR ANY ASPECT OF THE USE LICENSEE EXPECTS OR INTENDS TO MAKE OF THE LICENSED PREMISES. ACCORDINGLY, LICENSEE ACKNOWLEDGES AND AGREES THAT IT HAS MADE AN ADEQUATE INVESTIGATION AND INSPECTION OF THE LICENSED PREMISES AND HAS MADE ITS OWN DETERMINATION REGARDING THE SUITABILITY OF THE LICENSED PREMISES FOR LICENSEE'S PROPOSED USE AND IS SATISFIED WITH THE CONDITION, FITNESS, AND ORDER THEREOF.

B. LICENSEE ACCEPTS THE LICENSED PREMISES "AS-IS". THE CITY MAKES NO REPRESENTATION TO REPAIR ANY EXISTING DEFICIENCIES. COMMENCEMENT OF THE USE OF THE LICENSED PREMISES BY LICENSEE SHALL BE CONCLUSIVE THAT THE LICENSED PREMISES WAS IN GOOD REPAIR AND SATISFACTORY CONDITION, FITNESS, AND ORDER WHEN SUCH USE COMMENCED.

C. Licensee shall maintain the Licensed Premises in compliance with all applicable local, state, and federal laws and rules and in a manner which will not interfere with City's reasonable use of the Licensed Premises. Upon cancellation or termination of this License Agreement, Licensee shall immediately remove its personal property, if any, from the Licensed Premises. Should Licensee fail to remove any personal property by the required date, the City may elect to retain possession of the property, sell the property and keep the proceeds, or have the property moved at the expense of the Licensee.

D. Upon conclusion of each weekly Event, and upon cancellation or termination of this License Agreement, Licensee shall leave the Licensed Premises in substantially the same condition as received, except for ordinary wear and tear. This includes Licensee returning the Licensed Premises to its previous condition after each use and disposing of any trash and debris.

E. Licensee shall not store any materials on the Licensed Premises.

F. Licensee shall keep the Licensed Premises free of debris and anything reasonably determined to be of a dangerous, noxious, or offensive nature or which would create a hazard



or undue vibration, heat, noise, or interference.

G. Licensee shall not make any alterations or improvements to the Licensed Premises, save and except for the use of temporary barricades during Event Operating Hours as provided for in Section 10 below.

8. Power Outlets; Utilities.

The license granted herein includes the right for Licensee to make use of external power outlets. Use of such external power outlets is expressly limited to coffee brewing equipment and other machines, equipment, and devices that require minimal electrical current in order to operate and which use will result in a minimal increase in electricity costs for the Licensed Premises and/or the IPRC. Licensee shall not incur any financial obligation hereunder, outside of the consideration expressly provided for herein, for its use of such external power outlets in compliance with this Section 8.

9. Signage.

The Licensee must not place or permit the placement of any sign, banner, flag, or placard or similar advertising device on the Licensed Premises unless approved in writing in advance by the Director of Parks & Recreation ("Director"). Any sign approved by the Director that is governed by the City's sign regulations must comply with those regulations, including the requirement to obtain a permit. Notwithstanding the foregoing, identifying signage on vendor booths is allowed.

10. Access to Licensed Premises.

A. Licensee shall have unrestricted right of ingress and egress to the Licensed Premises during Operating Hours for its employees, representatives, vendors, and invitees, which shall not be unreasonably delayed or obstructed by City.

B. Licensee is responsible for barricading the areas to be used by the Event vendors so as to not allow vehicular access during Operating Hours. Licensee is responsible for all Event-day signage and directional signage.

C. The City has the right at any time to enter onto the Licensed Premises for the purpose of inspecting the Licensed Premises, and making necessary repairs, additions, or alterations as may be necessary for the safety, improvement, or preservation of the Licensed Premises.

11. Compliance with Laws.

A. Licensee's use of the Licensed Premises shall at all times comply with all laws, ordinances, rules, regulations, orders, or directives of any governmental authority, and will not commit or allow to be committed any public or private nuisance on the Licensed Premises. This includes securing and maintaining all necessary permits, including a Special Event Permit from the City, if so required.

B. Licensee is responsible for verifying that all applicable Event vendors have a valid and current sales tax permit as required by the State of Texas.

12. Event Operation.

A. Licensee will designate a duly authorized representative who will be a contact person for City staff and who shall be present at the Licensed Premises during the Operating Hours for each weekly Event.

B. Licensee is responsible for operation of the Event and no Event assistance shall be provided by City employees.

13. Complaints.

Licensee shall be solely responsible for responding to and resolving, to the City's satisfaction, any complaints from Event attendees regarding, arising from, or related to, the operation of the weekly Event on the Licensed Premises.

14. Claims.

The City shall not be liable for any claims, losses, or actions (including attorney's fees) for any injury to a person or damage to or loss of property on or about the Licensed Premises in connection with the license granted hereunder, caused by Licensee, its agents, employees, invitees (including Event vendors and attendees), or by any other person entering the Licensed Premises, the IPRC, or related facilities under express or implied invitation of Licensee, or arising out of Licensee's use of the Licensed Premises. Licensee agrees to use reasonable efforts to include in its contracts with any third parties the obligation for such parties to indemnify and hold City harmless from any and all loss and expense (including without limitation, attorney's fees) resulting from claims and damages caused by, arising out of, or incurred in connection with, the exercise by Licensee of its rights under this License Agreement

15. Indemnity.

LICENSEE HEREBY COVENANTS, REPRESENTS, AND RELEASES THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES, ATTORNEYS, AND REPRESENTATIVES OF THE CITY AND ITS/THEIR SUCCESSORS, IN BOTH THEIR INDIVIDUAL AND OFFICIAL CAPACITIES, AND THE AFFILIATES OF AND PERSONS AND ENTITIES RELATED TO ALL OF THE FOREGOING, INDIVIDUALLY AND COLLECTIVELY, (COLLECTIVELY REFERRED TO AS "CITY-RELATED PARTIES") FROM, AND SHALL INDEMNIFY, DEFEND, AND HOLD THE CITY-RELATED PARTIES HARMLESS AGAINST ALL ALLEGATIONS, CLAIMS (INCLUDING WITHOUT LIMITATION CLAIMS OF PERSONAL INJURY, ENVIRONMENTAL INJURY, BODILY INJURY, SICKNESS, DISEASE, DEATH, PROPERTY DAMAGE, CONSEQUENTIAL DAMAGES, DESTRUCTION, OR OTHER IMPAIRMENT), DEMANDS, LEGAL ACTIONS, EQUITABLE ACTIONS, COSTS (INCLUDING ALL

COURT COSTS, REASONABLE ATTORNEYS' FEES, EXPERTS' FEES OR OTHER COSTS INCURRED IN CONNECTION WITH INVESTIGATING, PREPARING, PROSECUTING OR SETTLING ANY LEGAL OR ALTERNATIVE DISPUTE RESOLUTION ACTION OR PROCEEDING), EXPENSES, LIABILITIES, ASSESSMENTS, TAXES, COSTS, FEES, LIENS, PENALTIES, FINES, LOSSES, DAMAGES, JUDGMENTS, OR PENALTIES OF WHATEVER NATURE OR DESCRIPTION, WHETHER KNOWN OR UNKNOWN (COLLECTIVELY "LIABILITIES") INCURRED BY ANY CITY-RELATED PARTY, WHICH LIABILITIES, DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, AROSE FROM OR MAY IN THE FUTURE ARISE FROM, OR ARE ALLEGED TO HAVE ARISEN FROM, ANY OF THE FOLLOWING:

- A. LICENSEE'S EXERCISE OF ITS RIGHTS UNDER THIS LICENSE AGREEMENT;
- B. LICENSEE'S ACTIVITIES UNDER THE LICENSE, INCLUDING ANY DELIBERATE, INTENTIONAL, RECKLESS, AND/OR NEGLIGENT ACT(S) OR OMISSION(S) OR WILLFUL MISCONDUCT OF LICENSEE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, OR INVITEE (INCLUDING EVENT VENDORS AND ATTENDEES) OF LICENSEE AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS LICENSE AGREEMENT; AND
- C. LICENSEE'S USE, OCCUPATION, MANAGEMENT, OR CONTROL OF THE LICENSED PREMISES.

FOR PURPOSES OF THIS INDEMNITY AND RELEASE, THE TERM "ARISE FROM" MEANS OCCURS IN CONNECTION WITH OR AS A RESULT OF OR IS CAUSED BY.

16. Insurance.

Licensee shall procure and maintain throughout the term of this License Agreement insurance in the types and amounts shown on attached Exhibit "B", which is attached to and incorporated herein by reference. Licensee agrees that it will include City as an additional insured.

17. No Real Property Interest.

Licensee's rights are limited to use of the Licensed Premises for the weekly Event during the Operating Hours, and Licensee's rights to use the Licensed Premises for the weekly Event are limited to the specific license rights created by this License Agreement, which creates only a license. The City does not by this instrument intend to create a lease, easement, or other real property interest. Licensee shall have no real property interest in the use of the Licensed

Premises for the weekly Event. This License Agreement shall not be recorded by either party hereto.

18. Miscellaneous.

A. Entire Agreements and Amendments. This License Agreement sets forth all of the understandings of the parties. No modifications of this License Agreement shall be allowed without the written consent of both City and Licensee.

B. Unlawful Use. Licensee and its employees and agents must not use or knowingly allow any other person to use the Licensed Premises in violation of any federal, state, county, or local regulation, order, law, or ordinance applicable to the Licensed Premises.

C. Notices. Any notice given under this License Agreement must be in writing and may be sent by mail; be delivered in person to the Licensee, its officers, employees, or agents; be posted on the Licensed Premises; by mail or courier, or by telecopier; addressed as follows, or as the City or Licensee may hereafter designate by written notice:

To the City: Director of Parks & Recreation
City of Sugar Land
PO Box 110
Sugar Land, Texas 77487

To Licensee: Fort Bend Chamber of Commerce
445 Commerce Green Blvd,
Sugar Land, TX 77478

D. Assignment, Transfer, and Sublicense. The license granted herein is personal to Licensee. Licensee may not sell, assign, or transfer this License Agreement or sublicense any portion of the Licensed Premises to any other person.

E. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary to this License Agreement or shall have any right or cause of action hereunder.

F. Submission of License Agreement and Authority. The submission of this License Agreement for examination does not constitute an offer to license the Licensed Premises, and this License Agreement becomes effective only upon the full execution by City and Licensee. Licensee warrants to City that the person or persons executing this License Agreement on behalf of Licensee has the full right, power, and authority to enter into and execute this License Agreement on Licensee's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this License Agreement.

G. Subject to Appropriations/Statutory Limitations. Any obligation or liability of the City arising in any way from this License Agreement is subject to, limited by, and contingent upon the appropriation and availability of funds, as well as the damage limits and notice requirements provided for in state law, including the Tort Claims Act. This License

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Agreement is not intended to create any rights or causes of action in any third parties or to increase the City's liability above the limits established by law.

H. Governing Law. This License Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed, and exclusive venue shall lie, in Fort Bend County, Texas.

I. Severability. In case any one (1) or more of the provisions contained in this License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that provision shall not affect any other provision hereunder.

J. Survival. The provisions of this License Agreement relating to indemnification shall survive any termination or expiration of this License Agreement. Additionally, any provisions of this License Agreement which require performance subsequent to the termination or expiration of this License Agreement shall also survive such termination or expiration.

K. Captions. The captions contained in this License Agreement are inserted for convenience only and are not intended to be part of this License Agreement. Such captions shall not affect or be utilized in the construction or interpretation of this License Agreement.

L. Relationship of City and Licensee. It is expressly understood that the City shall not be construed or held to be a partner, co-venturer, agent, or associate of the Licensee; it being expressly understood that the relationship between City and Licensee is and shall remain at all time that of a licensor and licensee.

IN WITNESS WHEREOF, this License Agreement has been duly executed as of the dates set forth below the signature lines for the parties hereto, but is made effective for all purposes as of January 1, 2018 (the "Effective Date").

[Signature Page Follows]

**FORT BEND CHAMBER OF
COMMERCE ("LICENSEE")**

CITY OF SUGAR LAND ("CITY")

By: Ken Schmidt
Name: Ken Schmidt
Its: President & CEO
Date: 12.22.17

By: _____
Name: _____
Its: _____
Date: _____

ATTEST:

Thomas Harris, Assistant City Secretary

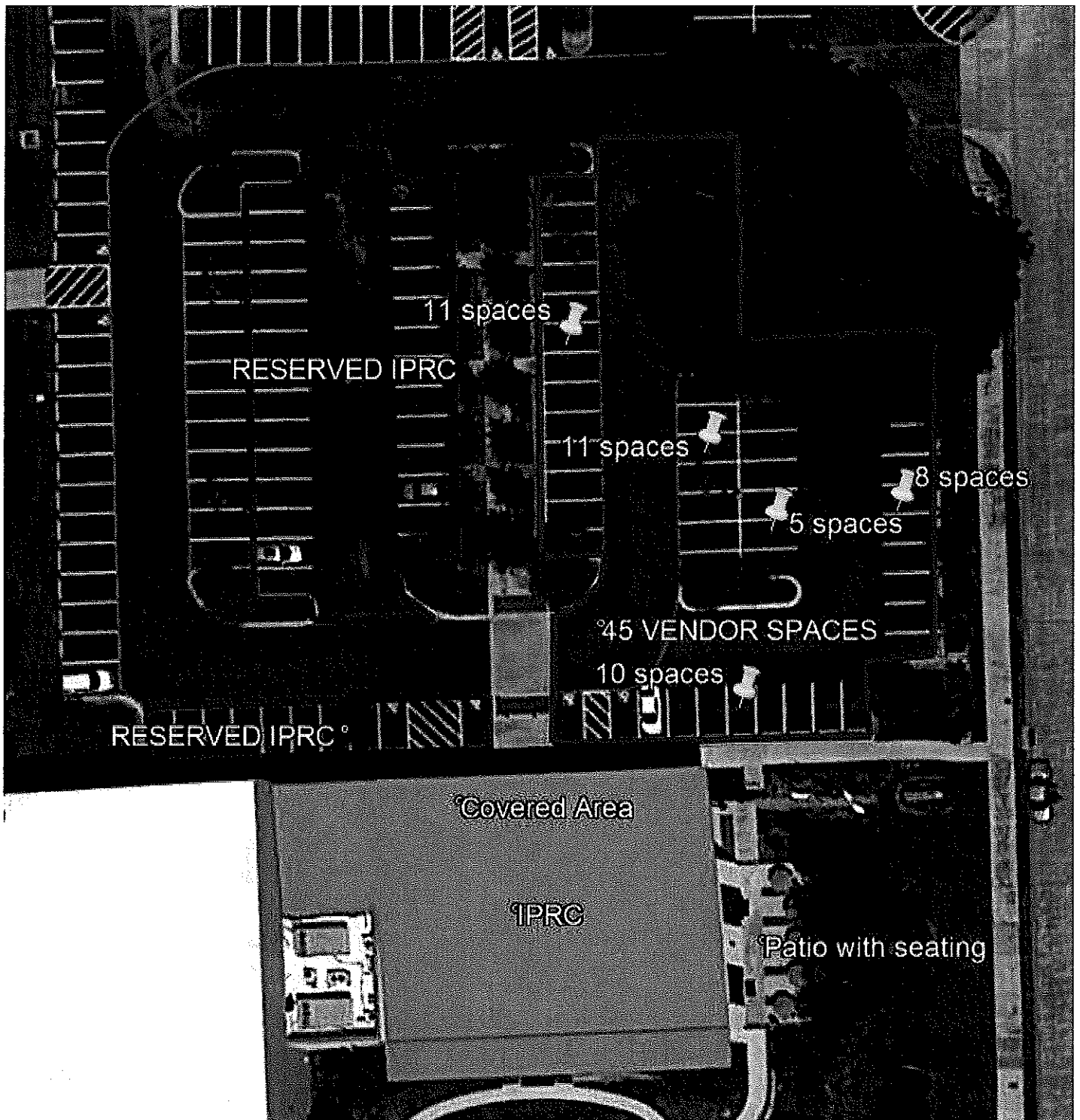
APPROVED AS TO FORM:

Shea Smith, Assistant City Attorney

Attachments:

- Exhibit A - Map of Licensed Premises and IPRC Reserved Spaces
- Exhibit B – Insurance Requirements

EXHIBIT A



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EXHIBIT B

INSURANCE REQUIREMENTS - LICENSE AGREEMENT FOR THE TEMPORARY OPERATION OF A FARMER'S MARKET ON CITY-OWNED PROPERTY

The Licensee shall comply with each and every condition contained herein. The Licensee shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractors hired by the Licensee and all vendors for each weekly Event shall maintain insurance coverage equal to that required of the Licensee. It is the responsibility of the Licensee to assure compliance with this provision. The City of Sugar Land accepts no responsibility arising from the conduct, or lack of conduct, of any Subcontractor or the Event's vendors.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Licensee shall specifically endorse applicable insurance policies as follows:

- A. The City of Sugar Land shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement
- B. A waiver of subrogation in favor of The City of Sugar Land shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
- C. All insurance policies shall be endorsed to the effect that The City of Sugar Land will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Sugar Land as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Sugar Land of any material change in the insurance coverage.
- G. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Licensee may maintain reasonable and customary deductibles, subject to approval by The City of Sugar Land.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05) Coverage must be written on an occurrence form.
- L. Contractual Liability must be maintained covering the Licensee's obligations contained in the License Agreement. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Licensee shall furnish The City of Sugar Land with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Sugar Land within ten (10) business days after the Effective Date of the License Agreement, and prior to any Event first being held by Licensee, by the Licensee's insurance agent of record or insurance company. Also, prior to any Event first being held by Licensee, and at the same time that the Certificate of Insurance is issued and sent to the City of Sugar Land, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Sugar Land. The certificate of insurance and endorsements shall be sent to:

City of Sugar Land
Purchasing Office
P. O. Box 110
Sugar Land, TX 77487-0110

emailed to: purchasing@sugarlandtx.gov
Faxed to: 281 275-2741

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**INSURANCE REQUIREMENTS - LICENSE AGREEMENT FOR THE TEMPORARY OPERATION
OF A FARMER'S MARKET ON CITY-OWNED PROPERTY**

City Staff shall determine the appropriate level of risk and assign the insurance requirements based on that risk.

Items marked "X" are required to be provided.

Coverages Required & Limits (Figures Denote Minimums)

X Workers' Compensation Statutory limits, State of TX.

___ Employers' Liability \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

X Commercial General Liability:

	<u>___</u> Very High/High Risk	<u>___</u> Medium Risk	<u>X</u> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

X Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)

<u>___</u> Very High/ High Risk	<u>___</u> Medium Risk	<u>X</u> Low Risk
Combined Single Limits	Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily	\$500,000 Bodily	\$300,000 Bodily

___ Garage Liability for BI & PD

\$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto

\$2,000,000 General Aggregate

___ Garage Keepers Coverage (for Auto Body & Repair Shops)

\$500,000 any one unit/any loss and \$200,000 for contents

___ Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

Contract value less than \$1,000,000: not required

Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**

Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**

Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**

Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

___ Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate

This coverage must be maintained for at least two (2) years after the project is completed.

___ Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Sugar Land) Limit is 100% of insurable value, replacement cost basis

___ Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Sugar Land)

___ Other Insurance Required: _____

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.