

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Caroline Cheung via Clay Holstine, City Manager

DATE: Meeting of March 5, 2012

SUBJECT: Potential Farmers Market at the Community Park in Brisbane

PURPOSE:

To provide a healthy and convenient grocery shopping alternative for those who live and work in Brisbane, and which allows the Community to come together as a whole on a weekly basis.

RECOMMENDATION:

For the Council to approve the License Agreement between the City and West Coast Farmers Market Association.

BACKGROUND:

At the February 6, 2012 City Council meeting, the Council approved the concept of a year-round farmers' market taking place in the Community Park on Thursdays between the hours of 3:00pm – 7:00pm during the summer and 2:00pm – 5:30pm during the winter months.

DISCUSSION:

Per Council's direction, the City Attorney drafted a License Agreement between the City and West Coast Farmers Market Association (see Attachment 1). The terms of this agreement are for a six month period, commencing on April 5, 2012 where West Coast Farmers Market Association may request an extension of the term by submitting a written request for extension to the City Manager prior to October 4, 2012. The License Agreement also includes a Site Plan for the farmers' market, indicating the farmers' tents to be lined up mostly along San Francisco Avenue, with additional ones lined along the walking path nearest Old County Road.


FISCAL IMPACT/FINANCING ISSUES:


None, besides it being anticipated that local businesses would be able to further get the word out about their own business through an information booth that will be offered each week by West Coast Farmers Market Association.

Since the open grassy area of the Community Park and the gazebo will be used each week by West Coast Farmers Market Association, a weekly rental fee of \$200 has been written into the License Agreement, to be paid monthly to the City. This new fee for West Coast Farmers Market Association would be added to the Parks and Recreation Department's Fee Schedule.

MEASURE OF SUCCESS:

A certified farmers' market coming to Brisbane which will add a quality alternative to Brisbane's grocery shopping experience, as well as a social benefit to the community.



Management Analyst
Caroline Cheung

City Manager
Clay Holstine**ATTACHMENTS:**

1 – License Agreement

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, dated March 5, 2012, between THE CITY OF BRISBANE, a municipal corporation ("City") and WEST COAST FARMERS MARKET ASSOCIATION ("WCFMA") is made with reference to the following facts:

A. City is the owner of a public park generally located between San Francisco Avenue and Old County Road, commonly known as the Brisbane Community Park ("the Park")

B. WCFMA desires to operate a farmers market at the Park and City is willing to grant a revocable license to WCFMA to use and occupy a portion of the Park for the purposes authorized by this Agreement, subject to all of the terms and conditions hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

1. **Grant of License.** City hereby grants to WCFMA a revocable license to use and occupy a portion of Park for the purpose of operating a farmers market wherein participating merchants will be engaged in the retail sale of agricultural products and other items customarily offered at a farmers market for sale to the general public. The license granted herein shall authorize use and occupancy of the Park only by WCFMA and its authorized agents and participating merchants who are engaged in operation of the farmers market pursuant to an agreement with WCFMA ("Participating Merchants"). The agreement between WCFMA and the Participating Merchants shall require each Participating Merchant to comply with all of the applicable conditions and requirements set forth in this License Agreement.

2. **License Area.** The area of the Park to be occupied by WCFMA shall be along the sidewalk adjacent to San Francisco Avenue and one of the interior walkways of the Park, as shown on Exhibit "A" attached hereto and made a part hereof (the "License Area"). Each of the boxes shown on Exhibit "A" represents the approximate location of an individual booth or area to be occupied by a Participating Merchant. The total number of booths shall not be increased without prior written approval of the Director of Public Works/City Engineer. In addition to the booths shown on Exhibit "A", the License Area also includes the gazebo within the Park, which may be utilized by musicians or other performers for entertainment of persons visiting the market.

3. **Modification of License Area.** The Director of Public Works/City Engineer shall have authority to modify the location of the License Area and require that another portion of the Park be utilized for the farmers market if he determines that such relocation is necessary to avoid damage or excessive wear on landscaping or Park facilities. The Director of Public Works/City Engineer shall give WCFMA notice of the required relocation at least five (5) calendar days prior to the market day by which the relocation must be implemented.

4. **Condition of License Area.** Use of the License Area is being granted to WCFMA in its present condition and City shall have no obligation to make any alterations or improvements to the License Area to accommodate WCFMA's use. WCFMA acknowledges that City has made no representations or warranties concerning the condition of the License Area or its suitability for WCFMA's intended use. It shall be the sole responsibility of WCFMA to conduct such inspections of the License Area as it deems necessary to satisfy itself that the License Area can be used for the purposes intended by WCFMA and its Participating Merchants. WCFMA further acknowledges that no water, electricity, or other utility service will be provided by City to the License Area.

5. **Time of Operation.** It is anticipated that the farmers market will be operated by WCFMA on Thursday afternoons between the hours of 3:00 p.m. and 7:00 p.m. during the summer and between the hours of 2:00 p.m. and 5:30 p.m. during the winter. WCFMA shall give notice to the City Manager of each change in the hours of operation at least five (5) calendar days prior to the date of change.

6. **Term of License.** The initial term of this license shall be for a period of six (6) months, commencing on April 5, 2012 and ending on October 4, 2012. WCFMA may request extensions of the term for additional periods of six (6) months each by submitting a written request for extension to the City Manager prior to expiration of the current term. Nothing herein shall obligate City to grant an extension of the initial term or any renewal term, and the granting of one or more extensions shall not prevent City from refusing to grant any later extension.

7. **Termination of License Prior to Expiration of Current Term.** WCFMA may terminate the license at any time during the initial or any extended term by giving written notice to the City Manager stating the effective date of termination. City reserves the right to terminate the license prior to expiration of the initial term or any renewal term, with respect to all or any portion of the License Area, upon thirty (30) days prior written notice to WCFMA, in the event City requires use of the License Area for any public purpose and such use cannot reasonably be conducted at an alternative location, or if the Director of Public Works/City Engineer determines that the operation of the farmers market is causing damage to the Park, or creates a traffic or health or safety hazard. City may also terminate the license in the event of any default by WCFMA in the performance of its obligations under this Agreement and such default is not cured within ten (10) days after written notice thereof to WCFMA, or such other period of time as may be specified in the notice.

8. **Rent.** WCFMA shall pay to City as rent for the use and occupancy of the License Area the sum of Two Hundred Dollars (\$200.00) per week, payable monthly in advance on the first day of each calendar month, each such payment to be in the amount of Eight Hundred Dollars (\$800.00) for the next four (4) successive weeks. For WCFMA's first payment of \$800.00, such is to be paid by April 30, 2012. If any rent is not paid within five (5) days after the same becomes due, City may suspend this License and WCFMA's entitlement to operate a farmers market at the Park until the rent is paid in full. If any market day is cancelled during an entire week for which rent has been pre-paid, WCFMA may credit the rent for that week against the rental payment that becomes due for the following month.

9. **Permitted Uses.** The License Area shall be used and occupied by WCFMA solely for the purpose of operating a farmers market and related activities, such as entertainment of shoppers, and for no other purpose without the prior written approval of City. No amplified sound of any kind shall be used. All Participating Merchants shall be instructed by WCFMA to park their vehicles on the north side of Park Lane. City shall have no responsibility for providing security service for the License Area or operation of the farmers market therein, other than normal police patrols that are routinely conducted within central Brisbane.

10. **Compliance With Legal Requirements.** WCFMA and its Participating Merchants shall strictly comply with all applicable federal, state and local laws and regulations concerning transportation, handling, storage, and sale of food and other products offered for sale by the Participating Merchants at the farmers market. WCFMA shall strictly comply with all applicable laws, ordinances and regulations pertaining to the operation of a farmers market. Prior to commencement of the first market day, WCFMA shall obtain a City of Brisbane Business License and WCFMA shall keep and maintain such license in full force and effect at all times during the term of this License Agreement.

11. **Clean-up on Market Days.** Upon the conclusion of each market day, WCFMA and its Participating Merchants shall thoroughly clean the License Area, remove all trash, waste, and debris to an off-site location, and restore the License Area to substantially the same condition as existed before the conduct of the event, including the repair of any damage to City property resulting from the market activities.

12. **Indemnity.** WCFMA agrees to indemnify, defend, and hold City, and its officers, officials, boards, commissions, employees, and agents, harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the License Area or the operation of a farmers market thereon, or occasioned by any negligent act or omission of WCFMA or its Participating Merchants, or arising from any breach of this License Agreement by WCFMA or any of its Participating Merchants. The indemnity obligations of WCFMA set forth herein shall survive and continue beyond the term of this License Agreement.

13. **Liability Insurance.** During the term of this License Agreement, WCFMA shall procure and maintain in full force and effect at WCFMA's expense: (i) comprehensive general liability insurance with an aggregate limit of not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring against all liability of WCFMA and City for bodily injury and property damage arising out of or in connection with WCFMA's, use and occupancy of the License Area and also insuring performance by WCFMA of the indemnity provisions set forth in Section 12 of this License Agreement. The amount of such general liability insurance shall not limit WCFMA's liability nor relieve WCFMA of any obligations under this License Agreement. The general liability insurance policy shall name City, and its officers, officials, boards, commissions, employees, agents, and volunteers as insured parties thereunder, and shall be endorsed to provide that: (i) the insurance coverage thereunder shall be primary with respect to City; and (ii) no cancellation or reduction in coverage will be made without ten (10) days prior written notice to City by the carrier.

14. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be mailed or personally delivered to the other party at the following address:

City of Brisbane
Attn: City Manager
50 Park Place
Brisbane, Ca 94005

West Coast Farmers Market Association
Attn: Jerry Lami
209 Yarborough Lane
Redwood City, Ca 94061

Any notice sent by mail shall be deemed received on the third business day after deposit of the notice in the U.S. Mail with proper postage prepaid thereon.

15. **Costs of Suit.** In the event legal action between City and WCFMA shall become necessary in order to enforce or interpret this License Agreement, or any provision contained herein, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

16. **No Assignment.** This License is personal to WCFMA and may not be assigned or transferred to any other party without the prior written consent of City.

17. **Successors and Assigns.** Subject to the restrictions against assignment by WCFMA, this License Agreement shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this License Agreement the day and year first above written.

CITY OF BRISBANE

By: _____
CLIFF LENTZ, Mayor

APPROVED AS TO FORM:


HAROLD S TOPPEL, City Attorney

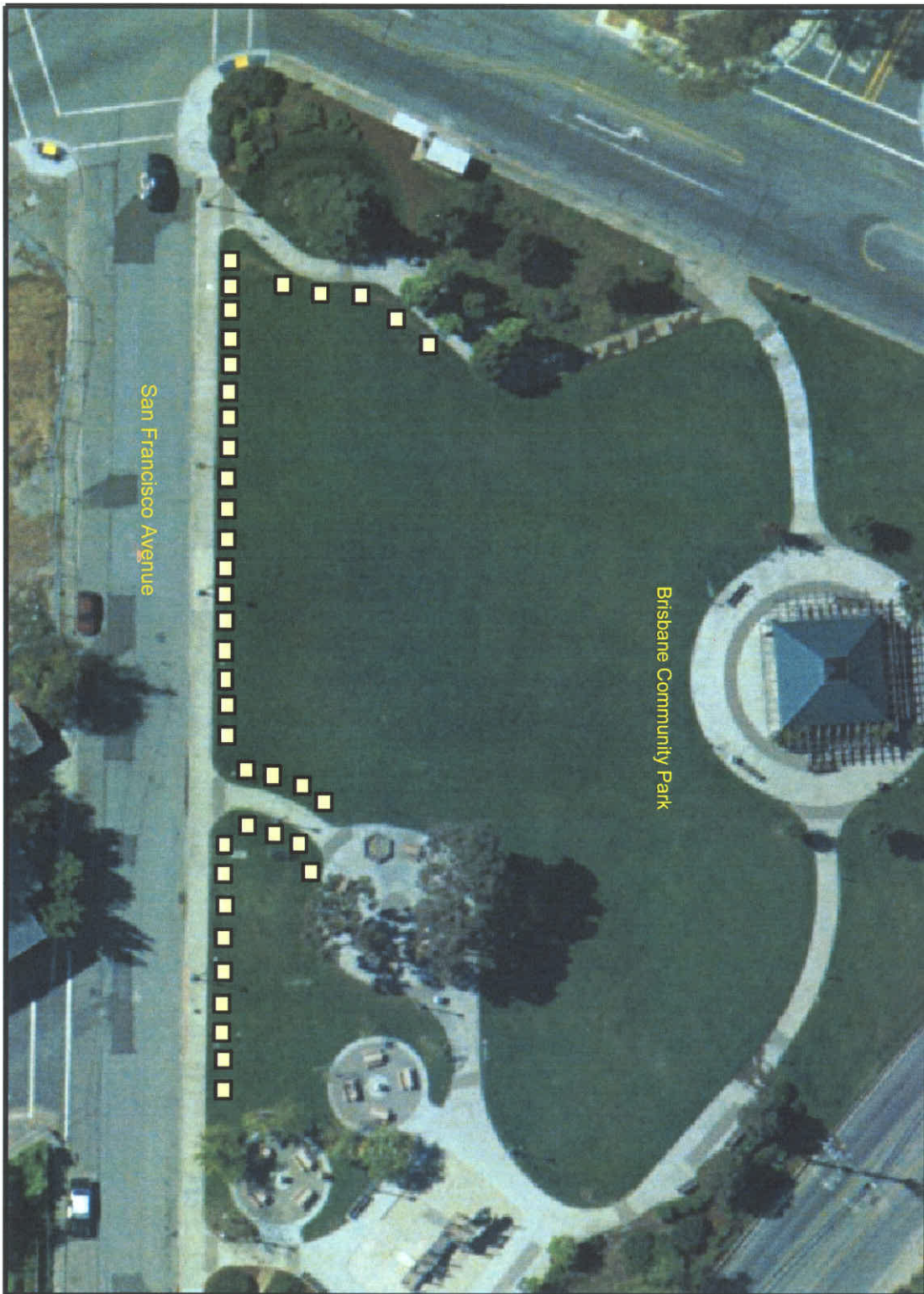
WEST COAST FARMERS
MARKET ASSOCIATION

By: _____

EXHIBIT "A"

Site Plan For Farmers Market

0 15 30 60 Feet



Map for West Coast Farmers Market Association

City of Brisbane
For Planning and Design Only
Obtain a Registered Survey for Accurate Information