

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Caroline Cheung via Clay Holstine, City Manager

DATE: Meeting of October 15, 2012

SUBJECT: Farmers' Market Extension and Amendment of License Agreement

PURPOSE:

To continue 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 consider approving the Second Amendment and Extension of West Coast Farmers Market Association's License Agreement.

BACKGROUND:

At the July 23, 2012 Council Meeting, the Council approved an amendment to West Coast Farmers Market Association's (WCFMA) original License Agreement (see Attachment 3), which waived the weekly park rental fee of \$200.00 for the remaining term of the License Agreement, and authorized up to three food trucks to participate in the farmers' market (see Attachment 4). Both of these are being proposed as continuing in the Second Amendment and Extension of License Agreement for WCFMA (see Attachment 1).

DISCUSSION:

The original terms for the License Agreement were for a six-month period, commencing on April 5, 2012 and ending on October 4, 2012. Due to the farmer's market being successful in providing a healthy grocery shopping alternative, the Community embracing the market being here each week, and WCFMA having met the terms of the original license agreement, a year-long extension is being proposed. Other changes from the original agreement include: having the time of operation continuing to be 3:00pm – 7:00pm, as their busiest time is seen to take place between 6:15pm – 7:00pm. This is most likely due to people returning from work at that time. The area in the Park covered by the License Agreement proposes to include the section of walkway where the

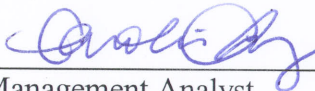
kettlecorn vendor, Kettle Pop, has been setting up, so as to not impact the grass at all. Also, more vendors have been setting up along Old County Rd., as opposed to further down San Francisco Ave., in order to keep the vendors closer together and enable shoppers to more easily find what they're looking for. Exhibit "A" (see Attachment 2), which is the revised site plan for the farmers' market, illustrates these changes.

FISCAL IMPACT/FINANCING ISSUES:

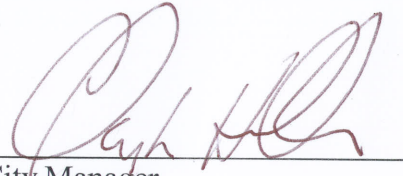
None.

MEASURE OF SUCCESS:

The success of a certified farmers' market in 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 – Second Amendment and Extension of License Agreement
- 2 – Exhibit "A" – Revised Site Plan for Farmers' Market
- 3 – Original License Agreement
- 4 – Amendment to License Agreement

SECOND AMENDMENT AND EXTENSION OF LICENSE AGREEMENT

THE CITY OF BRISBANE, a municipal corporation ("City") and WEST COAST FARMERS MARKET ASSOCIATION ("WCFMA"), being parties to a certain License Agreement dated March 5, 2012 ("the License Agreement"), as modified by an amendment effective July 23, 2012 (the "First Amendment to License Agreement"), pertaining to the operation of a farmers market at the Brisbane Community Park, hereby agree to extend the term and amend the License Agreement as follows:

1. **Term:** The term of the License Agreement is extended for a period of one (1) year, from October 5, 2012 to October 4, 2013. WCFMA may request additional extensions of the term in accordance with the provisions of Section 6 of the License Agreement.

2. **Time of Operation:** WCFMA may operate the farmers market on any single day during the week, as determined by WCFMA, and not only on Thursdays as specified in Section 5 of the License Agreement. However, WCFMA shall give City at least 24 hours prior notice whenever WCFMA intends to operate the farmers market on a day other than Thursday.

3. **License Area:** The License Area shown on the "Revised Site Plan For Farmers Market" attached hereto as Exhibit "A" and made a part hereof shall be substituted for the License Area shown on Exhibit "A" attached to the License Agreement.

4. **Rent:** The Rent payable by WCFMA for use and occupancy of the License Area, as set forth in Section 8 of the License Agreement, shall continue to be waived during the extended term, in accordance with Section 1 of the First Amendment to License Agreement.

5. **Food Trucks:** WCFMA may continue to authorize up to three (3) food trucks to participate in the farmers market during the extended term, subject to the restrictions set forth in Section 2 of the First Amendment to License Agreement.

6. **Continued Effectiveness of License Agreement.** Except previously amended by the First Amendment to License Agreement and further amended by this Second Amendment, the License Agreement shall remain in full force and effect.

7. **Effective Date:** This Amendment is effective as of October 5, 2012.

CITY OF BRISBANE,
a municipal corporation

By: _____
Clay Holstine, City Manager

WEST COAST FARMERS
MARKET ASSOCIATION

By: _____



Revised Site Plan for West Coast Farmers Market Association



San Francisco Avenue

Brisbane Community Park



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 March 5, 2012 and ending on September 3, 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. 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.

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

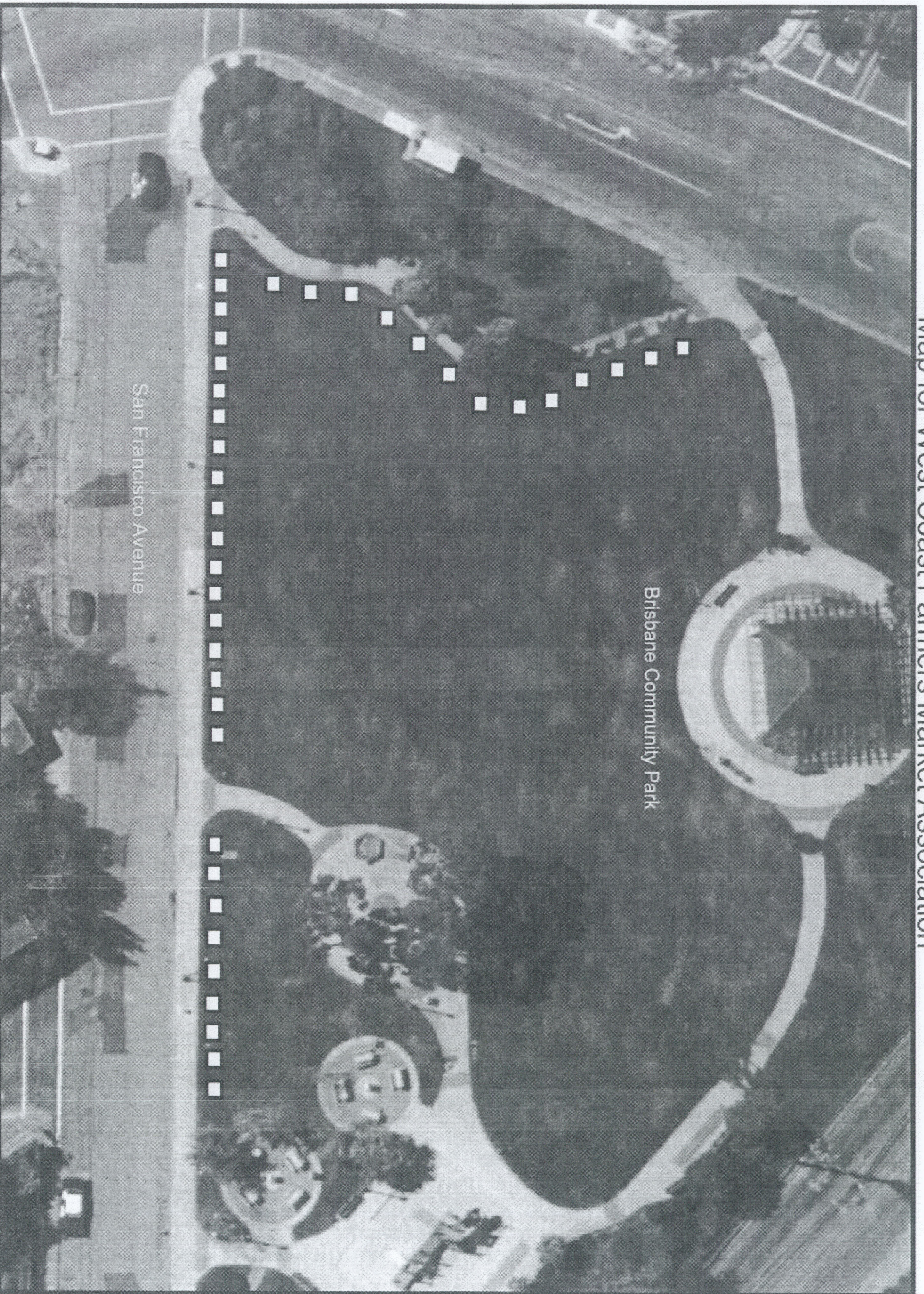
APPROVED AS TO FORM:


HAROLD S TOPPEL, City Attorney

WEST COAST FARMERS
MARKET ASSOCIATION

By: 

Map for West Coast Farmers Market Association



AMENDMENT TO LICENSE AGREEMENT

THE CITY OF BRISBANE, a municipal corporation ("City") and WEST COAST FARMERS MARKET ASSOCIATION ("WCFMA"), being parties to a certain License Agreement dated March 5, 2012 ("the License Agreement"), pertaining to the operation of a farmers' market at the Brisbane Community Park, hereby agree to amend the License Agreement as follows:

1. The Rent payable by WCFMA for use and occupancy of the License Area, as set forth in Section 8 of the License Agreement, is waived for the remaining term of the License Agreement, commencing as of the rent due on July 1, 2012.

2. WCFMA may authorize up to three (3) food trucks to participate in the farmers' market, subject to the following restrictions:

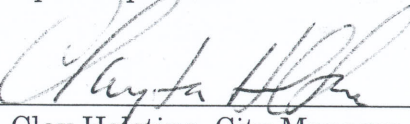
- (a) The food products to be sold by the food truck shall not compete with the type of food offered for sale by established Brisbane restaurants.
- (b) The food trucks shall be parked at locations that will not conflict with the safe movement of pedestrian or vehicular traffic, as determined by the City's Director of Public Works/City Engineer. The food trucks shall be parked on that portion of San Francisco Avenue adjacent to the farmers' market. Nothing herein shall constitute a permit or license to operate the food truck at any other location within the City of Brisbane.
- (c) The operator of the food truck shall have received all licenses, permits, inspections and other authorizations to conduct its business as may be required by law, including a Business License issued by the City.
- (d) WCFMA shall enter into an agreement with the operator of the food truck incorporating the terms and restrictions of the License Agreement, including the restrictions set forth in this Section. The food truck may be operated only pursuant to the License Agreement and such operation shall be discontinued

in the event of any expiration, cancellation or termination of the License Agreement.

3. Except as herein amended, the License Agreement shall remain in full force and effect. This Amendment is effective as of July 23, 2012.

CITY OF BRISBANE,
a municipal corporation

By: _____


Clay Holstine, City Manager

WEST COAST FARMERS
MARKET ASSOCIATION

By: _____

