DATE: December 13, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Kymberly Horner
Economic Development Director

SUBJECT: First Amendment to License Agreement for Plaza Park Farmers Market

CONTACT: Kymberly Horner, Economic Development Director
Kymberly.Horner@oxnard.org, 385-7407

RECOMMENDATION:

That the City Council approves the First Amendment to the License Agreement for Plaza Park Farmers Market.

BACKGROUND

The Farmers Market has been a tradition in the City of Oxnard ("City") for 25 years. The Market is held every Thursday at Plaza Park, rain or shine. Some of the offerings of the Farmers Market include a venue to buy locally grown farm products such as fruits, flowers, vegetables, eggs, nuts and honey, fresh-baked bread, assorted live plants, and jewelry. Live entertainment if offered with ample seating to enjoy the setting. Onsite snack and lunch options complement Downtown eateries that offer a wide variety of choices.

The Market was overseen by the former Community Development Department in the mid to late 2000's and was then picked up by Economic Development Corporation of Oxnard ("EDCO") and the Oxnard Downtown Improvement District ("ODID") for a brief stint, before coming back to the current Community and Economic Development Department in 2014. The Market became lack luster and was losing its prominence in our community, largely due to a performance issue by the operator. A Request for Proposal ("RFP") was sent out to hire a Farmers Market operator, approximately fifteen people attended the mandatory RFP meeting and two applicants submitted
applications; the former operator's wife, and the Downtown Oxnard Merchants Association (DOMA also referred to as the Downtowner). The committee who reviewed the RFP's overwhelmingly voted for the DOMA. The DOMA board consists of Gary Blum, Betty Kennedy, and Pablo Ortiz. The City and DOMA both went back and forth on the deal points of the contract for several months before coming to a resolution. When all issues were settled, the contract was signed off by all parties.

On October 1, 2014 the City and the Oxnard Downtowners, a California public benefit corporation doing business as Downtown Oxnard Merchants Association entered into a License Agreement for the use of Plaza Park for a Farmers Market for three years. The fee for this license agreement was one dollar ($1) for all three years. The License Agreement states in Section 19 in Exhibit C that if, by Year 3 of original agreement, the License is amended for time "that fifteen per cent (15%) of the Operator's (DOMA) quarterly gross revenue in excess of Two Thousand Eight Hundred and Fifty Dollars ($2,850) shall go to the City."

During the time of the original License Agreement, DOMA supplied to City staff information concerning (i) total number of vendors; (ii) gross revenues; and (iii) estimates of attendance.

Through negotiations with DOMA and City staff in October and November of 2017, it was agreed that in Year 1 of the First Amendment to the License Agreement DOMA shall pay to the City a fee of one dollar ($1). In Year 2 and Year 3, DOMA shall pay to the City fifteen per cent (15%) of the Operator's quarterly gross revenue in excess of Two Thousand Eight Hundred and Fifty Dollars ($2,850). This amount shall be paid to the City quarterly, or successive three-month periods commencing upon the first date of the month on which this Amendment becomes effective.

During the term of this Amendment, DOMA shall provide to the City information concerning (i) total number of vendors; (ii) gross revenues; and (iii) estimates of attendance on a quarterly basis.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 3. Strengthen neighborhood development, and connect City, community and culture:

Objective 3a. Create a renewed focus on establishing a positive outlook and orientation of our City, neighborhoods and overall community.
Objective 3b. Empower and connect our Inter-Neighborhood Council Organizations (INCOs), Community Advisory Groups (CAGs) and Neighborhood Watch Program.

Objective 3c. Improve our methods of communicating with residents, businesses and neighborhoods.

Objective 3f. Develop a co-sponsorship policy with criteria that would enable the City to encourage local community events.

This agenda item supports the Economic Development strategy. The purpose of the Economic Development strategy is to develop and enhance Oxnard's business climate, promote the City's fiscal health, and support economic growth in a manner consistent with the City's unique character. This item supports the following goals and objectives:

Goal 1. Create vibrant and economically sustainable commercial, industrial and retail industries throughout the City:

Objective 1a. Focus available resources on a comprehensive effort to promote economic activity in Oxnard, including a marketing program that communicates the City's available resources and assets.

Goal 2. Enhance business development throughout the City:

Objective 2a. Develop a strong citywide economy which attracts investment, increases the tax base, creates employment opportunities, and generates public revenue.

Objective 2b. Improve relationships and communication between the City and the business community.

Objective 2c. Capitalize on historic, cultural and natural resources.

Objective 2d. Public safety will collaborate with the business community to promote an environment that supports economic development.

Goal 5. Revitalize Oxnard's downtown and pursue economic development opportunities:

Objective 5a. Develop a vision and plan (with timelines) for downtown revitalization to create a vibrant center for our community, emphasizing cultural arts, diversity and historic assets.

FINANCIAL IMPACT

In Year 1 of Amendment, DOMA will pay the City one dollar ($1).
In Year 2 and Year 3, 15% of DOMA's quarterly gross revenue in excess of Two Thousand Eight Hundred and Fifty Dollars ($2,850.00) will be paid to the City. This amount shall be paid to the City at the end of each quarter. The term "quarter" shall mean successive three-month periods commencing upon the first date of the month on which this License becomes effective. Payment received will be recognized to General Fund Economic Development Misc. Revenue (Account 101-8210-581-7523).

In order to insure compliance with Amendment, DOMA will supply to City staff information concerning (i) total number of vendors; (ii) gross revenues; and (iii) estimates of attendance on a quarterly basis.

ATTACHMENTS:

Attachment A: Agreement No. 6910-14-CD

Attachment B: First Amendment to Agreement 6910-14-CD
LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License") is entered into this 1st day of October, 2014, (hereinafter the "Effective Date") by and between the City of Oxnard ("City") and Oxnard Downtowners, a California public benefit corporation doing business as Downtown Oxnard Merchants Association ("DOMA"), ("Licensee").

WHEREAS, the City owns the public property described and physically shown in Exhibit "A" attached hereto and incorporated herein by this reference ("License Area"); and

WHEREAS, the City wishes to grant a License to Licensee to enter the License Area for the purpose of conducting a Certified Farmers Market ("Activity"); and

WHEREAS, Licensee desires to use the License Area for the above-stated Activity at such days, times, intervals and duration as provided herein; and

WHEREAS, the City desires to make the License Area available to Licensee to conduct the Activity at such days, times and intervals for the term of this License.

NOW, THEREFORE, the City and Licensee hereby agree as follows:

1. License Granted

   a. Subject to the conditions contained in this License, the City grants to Licensee a non-exclusive, revocable license to conduct the Activity on the License Area.

   b. The Licensee’s rights and entitlements under this License shall not commence until the Conditions Precedent set forth in Exhibit “B” (attached hereto and incorporated herein by this reference) have been fulfilled to the reasonable satisfaction of the City.

   c. Upon satisfying the requirements of Exhibit “B,” the Licensee may commence use of the License Area for the Activity, subject to the Operational Parameters set forth in Exhibit “C” (attached hereto and incorporated herein by this reference).

   d. The fee for this License is specified in Section 19 of Exhibit “C” hereto.

   e. Licensee may associate with another California nonprofit organization to facilitate the terms of this License. Should any such association occur, the associated organization shall be bound to the same terms applicable to Licensee under this License.

2. Maintenance

   a. Licensee Responsibilities. In consideration for this License, Licensee shall at all times:
(1) Comply, and cause its agents, representatives and associates to comply, with all laws, regulations, and orders of governmental authorities applicable to the Activity, and the provisions set forth Exhibits "B" and "C" hereto, as same may be amended by the City from time to time. The Activity shall be operated in accordance with the highest standards and practices in the industry.

(2) Obtain an appropriate use permit from the City for the Activity and comply with all terms and conditions of such use permit.

(3) Maintain the License Area and the area within twenty five (25) feet surrounding the License Area free of litter, trash and other debris, except to the extent the same are present at the commencement of each Activity. In the event Licensee fails to remove any merchandise, inventory, furniture, goods, wares or other property from the License Area after Activity hours, the City may retain all such property at a storage facility or dispose of such property at its sole discretion without any liability to the City or Activity vendors.

(4) Cooperate with the City's staff as requested.

(5) Conduct the Activity in a safe, sane and reasonable manner so as not to cause injury to persons or property.

(6) Return the License Area in as good a condition as when this License commenced.

(7) Provide the City a copy of any contract Licensee may enter into for operation of the Activity.

(8) Promote the Activity.

3. Term of License

The term of this License shall begin on the Effective Date, and shall terminate three (3) calendar years thereafter, on October 1, 2017, unless extended or terminated as provided for herein.

4. Termination

a. This License may be immediately terminated by the City Manager or designee ("Manager"), with good cause, by notifying Licensee in writing of Manager’s desire to terminate the License. For purposes of this License, the term “good cause” means any or all of the reasons described in Section 20 of Exhibit “C” hereto.

b. This License may be terminated by either party without cause upon giving the other party a written notice to terminate a minimum of 30 days prior to termination.

5. Permits, Licenses and Certificates

Licensee, at Licensee’s expense, shall obtain and maintain during the term of this License, all permits, licenses and certificates required in connection with the conduct of the Activity.
6. Taxes

Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Activity, License Area and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Activity.

7. Indemnity by Licensee

a. To the fullest extent permitted by law, Licensee shall (1) immediately defend; (2) indemnify; and (3) hold harmless City of Oxnard, its City Council, each member thereof, and its directors, officers, and employees (the “Indemnified Party”) from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with: (i) Licensee’s construction on or about the License Area; (ii) Licensee’s maintenance of or use of the License Area that is subject to the Activity; (iii) state of repair of the License Area; or (iv) presence of the Activity. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys’ fees; court costs; and costs of alternative dispute resolution. Licensee’s obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section are the result of the sole active negligence or sole willful misconduct of the Indemnified Party.

b. The duty to defend is a separate and distinct obligation from Licensee’s duty to indemnify. Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party immediately upon tender to Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by the Indemnified Party shall not relieve Licensee from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of the Indemnified Party, Licensee may submit a claim to City for reimbursement of reasonable attorneys’ fees and defense costs.

c. This Section shall survive expiration of this License or its earlier termination. The provisions of this Section shall not be restricted by and do not affect the provisions of this License relating to insurance.

d. Any associated organization pursuant to Section 1(e) shall be bound by these indemnity terms.

8. Insurance

a. Licensee shall obtain and maintain during the term of this License the insurance coverages as specified in Exhibit “K,” attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Licensee obtain and maintain such insurance coverages.
b. Licensee shall, prior to use of the License Area, file with the Risk Manager evidence of insurance coverage as specified in Exhibit “D.” Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in Exhibit “D.”

9. **Governing Law**

   The construction and interpretation of this License and the right and duties of the City and Licensee hereunder shall be governed by the laws of the State of California.

10. **Compliance with Laws**

    Licensee shall comply with all State, federal, and local laws, rules and regulations, now or hereafter in force, pertaining to Licensee’s use of the License Area.

11. **Notices**

    a. Any notices to the City may be delivered by mail addressed to: City of Oxnard, 300 West Third Street, 4th Floor, Oxnard, California 93030, Attention: City Manager.

    b. Any notice to Licensee may be delivered by mail addressed to: Downtown Oxnard Merchants Association, P.O. Box 1892, Oxnard, California 93032, Attention: President.

12. **Assignment**

    Except as provided in Section 1(e) of this License, Licensee may not delegate its rights or duties under this License without the written consent of the Manager, which consent may not be unreasonably withheld for any reason.

13. **Successors and Assigns**

    This License shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the City and Licensee, for the benefit of the License Area.

14. **Amendment**

    This License may be reviewed or amended at any time. Any amendments to this License shall become effective only when agreed to in writing by both the Manager and Licensee.

15. **Entire Agreement**

    This License constitutes the entire agreement of the City and Licensee regarding the subject matter hereof and supersedes all prior communications, agreements and promises, either oral or written.
CITY OF OXNARD

Greg Nyhoff, City Manager

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

APPROVED AS TO CONTENT:

Kymberly R. Homer, Economic Development Director

DOWNTOWN OXNARD MERCHANTS
ASSOCIATION

By: Pablo Ortiz

Its: President

APPROVED AS TO INSURANCE:

Risk Manager
Exhibit “A”
LICENSE AREA


Exhibit “B”
CONDITIONS PRECEDENT

1. Financial Capacity: The Licensee shall evidence financial capacity by providing financial documentation (bank statements, balance sheets, etc.) showing that the Licensee has at least six (6) months of liquid working capital OR the ability to obtain it.

2. Management Plan: The Licensee shall provide a Management Plan that includes the following components:
   
   a. Operational Oversight. Establishment and functionality of an Operations Committee to oversee event planning and implementation, with the express inclusion of the Oxnard Downtown Management District, nearby businesses and property owners, and the City as members and advisers.
   
   b. Public Safety. Provisions for security and crowd control including, but not limited to, the involvement of public safety personnel in event planning, protocols for handling crowd disturbances and the presence of the Licensee to serve as a point of contact for public inquiries and provide overall event coordination.
   
   c. Event Staging. Procedures for event staging including, but not limited to, setup/cleanup, refuse collection/disposal, provision/servicing of sanitary facilities, type/placement of directional and promotional signage, and location/reservation of parking for vendors and patrons.

3. Marketing Plan: The Licensee shall provide a Marketing Plan that includes the following components:
   
   a. Event Venue. Overall strategy with regard to event frequency, target audience, complimentary entertainment and promotional advertising to affirmatively further the City goals of showcasing downtown as a vibrant commercial and entertainment destination.
   
   b. Physical Layout. Conceptual plan showing the anticipated number of proposed vendors, the location and interspersing of products, staging of entertainment and the anticipated foot traffic for the customers to have an unfettered and pleasant experience at the Market.
   
   c. Product Control. Guidelines as to the screening/selection of vendors to ensure the best possible mix and highest quality of fruits, vegetables, and non-agricultural products that maximize customer selection and minimize over-duplication.
### Oxnard Downtowners Balance Sheet
As of July 8, 2015

<table>
<thead>
<tr>
<th>Assets</th>
<th>Jul 8, 15</th>
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<tbody>
<tr>
<td>Current Assets</td>
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<td>Total Accounts Receivable</td>
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| Total Assets | 19,781.81 |

#### Liabilities & Equity

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| Total Liabilities & Equity | 19,781.81 |

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### Oxnard Salsa Festival Balance Sheet
As of July 8, 2015

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<th>Assets</th>
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| Total Assets | 104,299.34 |

#### Liabilities & Equity

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| Total Liabilities & Equity | 104,299.34 |
# Oxnard Downtowners / Oxnard Salsa Festival Combined Financials

## DOMA Financial Statement

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## Income

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<td><strong>DT Farmers Market</strong></td>
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<td><strong>DT Food Trucks</strong></td>
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<td><strong>Tamale Festival</strong></td>
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<td><strong>Other Misc./ODMD</strong></td>
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## Expenses

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<td><strong>Sponsorships/Contributions</strong></td>
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<td><strong>Taxes &amp; Fees</strong></td>
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<td><strong>Telephone</strong></td>
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## Sales Tax

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## Bank Acct Balances 12/31/2014

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<th>2014</th>
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<th>2012.00</th>
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<td><strong>Rabobank DOMA account</strong></td>
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<td><strong>Pacific Western Bank Salsa account</strong></td>
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<td>3,018.71</td>
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<td><strong>Pacific Western Bank Salsa account</strong></td>
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Oxnard Downtowners (aka Downtown Oxnard Merchants Association or DOMA) dba Oxnard Salsa Festival 77-0367510
MEMO

September 8, 2014

TO: Contract Compliance Committee

VIA: Mike More, Financial Services Manager

FROM: Kymberly Horner, Interim Redevelopment Services Manager

SUBJECT: License Agreement Between the City and Downtown Oxnard Merchants Association for Conducting a Certified Farmers Market

The Community Development Department requests approval of License Agreement No. 6910-14-CD, authorizing the Downtown Oxnard Merchants Association to conduct a Certified Farmers Market at Plaza Park ("Market"). At present, the Market is conducted through the Oxnard Downtown Management District ("ODMD"). The agreement under which ODMD operates expired on June 30, 2014 ("Original Termination Date"), and has been continued on a short term basis pending award of a new contract.

In advance of the Original Termination Date, and with City Council consent, staff solicited proposals from other possible Market operators. Upon receipt of proposals, and with the involvement of staff and downtown stakeholders (including ODMD), the Downtown Oxnard Merchants Association ("DOMA") was selected as the preferred operator. Although the License Agreement becomes effective upon its execution, DOMA may not commence operations and replace the current Market operator until the following conditions precedent have been satisfied:

- Evidence of Financial Capacity.
- Preparation of a Management Plan.
- Development of a Marketing Plan.

Upon satisfying the Conditions Precedent, DOMA must abide by detailed operational parameters as detailed in Exhibit "C" of the proposed License Agreement. The term of the License will be for a period of one year following its execution. Either party may terminate the License by providing prior reasonable notice. An extension of term will require formal amendment of the Agreement. Licensee shall pay the City a fee of $1.00 plus 15% of Operator's quarterly gross revenue in excess of $2,850.00.

As consideration for the License, DOMA is required to compensate the City based on actual performance. In addition, all costs associated with staging, managing, marketing and operating the Market will be the responsibility of DOMA.

If you have any questions, please call me at extension 7853.

Thank you.
### DT Farmers Mkt. September 2014 - June 2015

#### INCOME

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#### EXPENSE

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Exhibit “C”
OPERATIONAL PARAMETERS

1. **Hours:** This License is for a turnkey operation of a year-round Certified Farmers Market as defined in the California Health and Safety Code and as certified and regulated by the State of California (the “Market”). The frequency, days of the week and hours of operations shall be subject to mutual agreement between the City and Licensee and detailed in the Management Plan. Any changes to the frequency, days of the week or hours of operation shall be by mutual written agreement of the City and Licensee.

2. **Location:** The City and Licensee acknowledge that the exact location of the License Area is subject to the approval and issuance of land use permits (if required). In addition, City Manager or designee may reasonably reconfigure the License Area in order to accommodate and/or address any required changes or extend the load out and load in hours. The Licensee cannot allow any Market activities outside the License Area without the prior written approval of the City Manager or designee.

3. **Covenants of Licensee:** The Licensee must provide a full turnkey year-round Certified Farmers Market during the times described in the Management Plan, which Market must be operated and maintained by a qualified operator at its sole cost and expense, in a first-class manner, and in compliance with all applicable ordinances, resolutions, rules and regulations of the City, County, State and Federal Law, as well as standard industry practices including, without limitation, with on-site Market management, Market rules, and periodic (non-notified) Market inspections.

4. **Vendors:** The Licensee at its sole cost and expense will work with approved organization(s) to book vendors for the Farmers Market who produce and sell fresh California produce, including fruits, nuts, vegetables, cut flowers, artisan breads, artisan prepared foods, gifts, “green” crafts and other products sold at comparable Certified Farmers Markets; provided, however, all such vendors booked for the Farmers Market are subject to the terms of this License.

5. **Security:** The Licensee or its Agent at its sole cost and expense must provide all necessary security and safety devices to protect the patrons of the Farmers Market during the Market’s operating hours.

6. **Image:** The Licensee at its sole cost and expense must promote the Farmers Market and Downtown Oxnard image as a healthy, vital part of the community.

7. **Permits:** The Licensee at its sole cost and expense must obtain and maintain all necessary permits, certificates, and licensees required to operate a Certified Farmers Market at the License Area and must ensure that all participating farmers, producers, entertainers and vendors obtain and maintain all necessary permits, certificates, and licenses require pursuant to the Certified Farmers Market regulations, local City, County, State and Federal laws.

8. **Surrender:** The Licensee at its sole cost and expense must surrender the License Area in the same condition, with all refuse, rubbish, and personal property removed, as when received by Licensee each week before the Market, with exception for any normal wear or tear.
9. **Damage:** The Licensee cannot remove, damage, or alter in any way the existing improvements or personal property of the City; and the Licensee must repair, at its sole cost and expense, any damage or alteration to the License Area in the same condition that existed before the damage or alteration.

10. **Special Activities:** Upon receiving written approval from the City Manager or designee one week in advance of the Market, the Licensee may provide special activities at the Market such as entertainment and cooking demonstrations from time to time. The Licensee and City must agree on an annual calendar of special Market activities, subject to update during the year upon written approval from the City Manager or designee.

11. **Name:** The Licensee agrees to use the name “Downtown Oxnard Farmers Market” exclusively during its operation of the Market. The City retains ownership of said name and all rights associated therewith.

12. **Maintenance of License Area:** The Licensee agrees to keep License Area, including landscaped areas, free of debris after each use; failure to comply may result in an assessment of fees to cover cost of cleaning and/or in immediate termination of the License at the sole discretion of the City Manager.

13. **Vehicles:** At no time may any market vendor or other person associated with the Licensee park any vehicle in the landscaped areas of the License Area.

14. **Condition:** During the term of this License, the Licensee must maintain the License Area in a good sanitary and neat order during its hours of operation. During the term of this License, the City should maintain the License Area in good condition and repair similar to its other parking lots.

15. **Conflicting Events:** The City Manager and Licensee will work together to relocate, reconfigure, reschedule, or cancel the Market from time to time if the City activities are scheduled to take place on the same day or there are environmental emergencies. The Licensee’s monthly fee will be prorated to reflect the cancellation of any Market days.

16. **Property Interest:** This License does not convey any property interest to the Licensee. Except for areas restricted because of safety concerns, the City and the general public will have unrestricted access upon License Area for all lawful acts.

17. **License Area Parking/Signage:** Reasonable effort will be made by City Manager or designee to resolve problems prior to the Market day including the Licensee posting parking lot signs or delineators the morning or evening before the Market event indicating to the public that the License Area is reserved for the Market and no parking is allowed in the License Area during the hours of Market operation. Should non-event vehicles be parked in the License Area the morning of the Market, the Licensee must attempt to advise vehicle owners that the vehicles must be relocated outside the License Area; otherwise the vehicles may not be allowed to be removed until after the Market is closed or arrangements can be made by the Licensee to safely relocate the vehicles by the driver during the event.

18. **Rights to Extend:** Any term extension may be at the rental fee set forth below and otherwise upon the same covenants, conditions, and provisions as provided in this License.
19. **Fee:** Upon satisfying the Conditions Precedent (Exhibit “B” of the License), the Licensee shall pay the City a fee of $1.00. By Year 3, if the License is amended for time, then it will be negotiated that fifteen per cent (15%) of Operator’s quarterly gross revenue in excess of Two Thousand Eight Hundred and Fifty Dollars ($2,850.00) shall go to the City. This amount shall be paid to the City at the end of each quarter in arrears (the “Fee”). A late charge of $500 applies on the second (2nd) of the month following the end of each quarter. As used herein, the term “quarter” or “quarterly” shall mean successive three-month periods commencing upon the first date of the month on which this License becomes effective. Each quarterly payment shall be accompanied by a report by the Licensee that provides the following information with supporting documentation: (i) total number of vendors; (ii) gross revenues; and (iii) estimates of attendance.

20. **Termination:** The City has the right to terminate this License as described in Section 4 for the following reasons:

   (a) City’s receipt of a written notice from any governmental authority that the Market violates or fails to comply with Applicable Laws or fails to maintain its certification as a Certified Farmers Market; provided, however, if such violations are curable, Licensee may cure any such violations within fifteen (15) days from the date the Licensee receives written notice of the same. Time allowed to cure violations may be extended at the sole discretion of the City Manager.

   (b) Failure to comply with the terms and conditions as set forth in this License may result in immediate termination at the sole discretion of the City Manager, including failure of Licensee to operate in a first-class manner, as evidenced by the City receipt of significant complaints about the Market, discourteous treatment of the public by Licensee’s employees or non-compliance with the Management Plan or Marketing Plan stipulation in Exhibit “B” and approved by the City.

21. **Waiver of Claims:** Licensee expressly waives all rights, if any, to assert any claims against the City, its officials, agents or employees, as their interests may appear, for any damage, destruction or loss to Licensee and/or its agents, representatives or employees by any reason of fire, theft, robbery or burglary, bodily injury, personal injury, death or any other cause whatsoever, unless and to the extent resulting from the gross negligence or willful misconduct of the City. The City has no responsibility to provide security, supervision or protection against any loss or harm that may be sustained by Licensee (or its employees, agents, representatives and guests) at the Market. Licensee accepts all responsibility for any injury or public liability incurred as a result of its use of the License Area unless it is demonstrated that any such claim is the due to the gross negligence or willful misconduct of the City or its officials, agents, or employees. Any associated organization pursuant to Section 1(c) of this License shall be bound by the terms of this Section.

22. **Event Costs.** Licensee is responsible, at its sole cost, for all expenses associated with the promotion, advertising, staging and production of the Market including, but not limited to display ads, flyers, social media and coupon-type activities for the entire term of the License.

23. **Personal Agreement:** Licensee understands and agrees that this License is personal to Licensee and it cannot be constructed to convey any interest whatsoever in or to real property including, without limitation, the License Area. Licensee has no right to assign, enter into a sublicense (other than to vendors offering product at the Market) or otherwise transfer or encumber this License or any of the Licensee’s rights hereunder without prior the City approval by amendment.
Exhibit "D"
INSURANCE REQUIREMENTS
24. **Independent Contractor:** The relationship created by this License and the operation of the License Area by Licensee as a Certified Farmers Market is that of an independent contractor and Licensee and its employees are not considered to be employees of the City nor can anything contained herein be deemed in any way to constitute a partnership, joint venture or joint enterprise between the City and Licensee. Subject to the provisions of this License, Licensee has sole control, supervision, direction and responsibility over the vendors at the Market, its employees and the manner and means of operating the License Area.

25. **Benefits:** Licensee is solely responsible for, and will hold the City harmless from, all matters relating to payment of Licensee’s employees, agents, subcontractors, and consultants, including compliance with social security requirements, federal and state income tax withholding, and all other regulations governing employer-employee relations. Licensee acknowledges that Licensee and its employees are not entitled to any of the benefits or rights afforded employees of the City including, without limitation, sick leave, vacation leave, compensatory leave, or health, life, dental, long-term disability, and workers’ compensation insurance benefits.

26. **Agency:** Licensee and its agents, employees, subcontractors, and consultants are not, and cannot be deemed to be agents of the City, and have no authority, expressed or implied to act on behalf of the City in any capacity, as agents or otherwise, or to bind the City to any obligations.

33. **Access to Records:** Licensee agrees that upon twenty-four hours’ notice, the City will be provided access to all accounting records of Licensee for the Market including, without limitation, duplicate vendor receipts and complete contact information for participating vendors.

35. **Successors and Assigns:** This License is binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, subject to the limitations on assignment.
TO: Marisela Ledezma Hart, City of Oxnard, Finance/Purchasing Department
FROM: Gary Blum, Farmer Market Committee Chair, Oxnard Downtowners
RE: Farmers Market License Agreement
DATE: 1-25-16

We were notified of additional insurance requirements for the completion of the Farmers Market License Agreement between our organization and the City of Oxnard.

We are requesting a waiver of these requirements due to the fact that our organization does not own or lease any vehicles for the “Certificate of Insurance for auto liability” and the “Additional Insured endorsement for auto liability” requirements to apply to. We also do not own any property as we lease office space in downtown.

We are also requesting a waiver of the "Certificate of insurance for workers compensation” and the “Waiver of subrogation for workers compensation” as we have no employees only utilizing contractors and/or volunteers.

Please let us know if this meets with City approval as we need to complete the Farmers Market License Agreement as soon as possible for County Agricultural Department requirements.

Thank you.

Cc: Kymberly Homer, City of Oxnard
    Pablo Ortiz, Oxnard Downtowners Chair
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER** License #: 0757776
Oxnard, CA - Laubacher - HUB International Insurance Services Inc.
200 W Fifth Street
Oxnard, CA 93030

**INURED**
Oxnard Downtowners
P.O. Box 1892
Oxnard, CA 93032

**COVERAGES**

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**REVISION NUMBER:**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This certificate of insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder.

**IMPORTANT:** If the certificate holder is an additional insured, the policy(ies) must be endorsed. If subrogation is waived, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**CERTIFICATE HOLDER**
City of Oxnard
300 West 3rd Street
Oxnard, CA 93030

**CANCELLATION**

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**AUTHORIZED REPRESENTATIVE**

© 1988-2014 ACORD CORPORATION. All rights reserved.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION - PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:
CITY OF OXNARD, 300 W THIRD STREET, OXNARD, CA 93030

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II - Who is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

   However:
   a. The insurance afforded to such additional insured only applies to the extent permitted by law; and
   b. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

2. This insurance does not apply to:

   a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
   b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
Agreement No. 6910-14-CD

FIRST AMENDMENT TO LICENSE AGREEMENT BETWEEN CITY OF OXNARD AND DOWNTOWN OXNARD MERCHANTS ASSOCIATION FOR THE OPERATION OF THE DOWNTOWN OXNARD FARMERS MARKET AT PLAZA PARK

This First Amendment ("First Amendment") to the License Agreement ("Agreement") is made and entered into in the County of Ventura, State of California, this 10th day of October, 2017, by and between the City of Oxnard, a municipal corporation ("City"), and Oxnard Downtowners, a California public benefit corporation doing business as Downtown Oxnard Merchants Association ("DOMA"). This First Amendment amends the Agreement entered into on October 1, 2014, by City and DOMA.

City and DOMA agree as follows:

1. In section 3 of the Agreement, the date "October 1, 2017" is deleted and replaced by the date "October 1, 2020".

2. For Year 1 of Amendment, DOMA shall pay the City a fee of $1.00. In Year 2 and Year 3, DOMA shall pay the City fifteen per cent (15%) of DOMA’s quarterly gross revenue in excess of Two Thousand Eight Hundred and Fifty Dollars ($2,850). This amount shall be paid to the City at the end of each quarter.

3. During the term of this Amendment, DOMA shall provide to the City information concerning (i) total number of vendors; (ii) gross revenues; and (iii) estimates of attendance on a quarterly basis.

4. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]
IN WITNESS WHEREOF, the parties hereto have executed the Amendment on the date first written above.

CITY OF OXNARD

Tim Flynn, Mayor

Date

APPROVED AS TO AMOUNT:

N/A

[ ] Lisa Boerner, Purchasing Agent

Date

VENDOR/CONTRACTOR/CONSULTANT

Elizabeth Kennedy

For 12-4-2017

Date

Pablo Ortiz, President

Date

Gary Blum, Board Member

12-4-17

Date

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

(required for any agreement amount)

Date

12-4-17

APPROVED AS TO CONTENT:

Kymberly Horner, Department Head

Date

12-4-17

APPROVED AS TO INSURANCE:

Mike More, Risk Manager

Date

12-7-17

The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC; or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

PLEASE DO NOT REMOVE THIS BOX