

**City Manager's Report****March 24, 2015 City Council Meeting****Prepared by:** Steve Youel, Director of Community Services**Item #:** 8.6

**Subject:** Adopt a resolution approving an agreement between the City of Placerville and El Dorado County Certified Farmer's Market Association to conduct a Farmers Market on City property and authorize the Director of Community Services to execute the same.

**Discussion:** The City of Placerville's long standing agreement with El Dorado County Certified Farmer's Market Association has recently expired. The intent of this lease agreement is to provide a certified farmer's market selling agricultural products, kitchen and garden items. City staff has worked with the tenant to make revisions to the agreement the better identify the perspective roles of each party. The revised agreement is similar to past agreements with the following exceptions: 1.) the basic rent was raised from \$100.00 per month to \$150.00; 2.) the tenant will limit the percentage of artisan/commercial participants to no more than 10%, and 3.) the tenant has agreed to new insurance, indemnification and hold harmless requirements.

The proposed contract (see attached) shall commence on the first Saturday in May 2015, at 1:00 p.m. and shall automatically renew each year after the initial year for one additional year. The leased term for each year shall commence on the first Saturday in May of each year, and end on the last Saturday prior to Thanksgiving of each year, upon the same terms and conditions specified within the proposed agreement, unless either party serves written notice to the non-terminating party of their intent not to renew the lease by February 1<sup>st</sup> of the consecutive year.

**Cost:** There will be no additional direct costs associated with this contract.

**Budget Impact:** Staff anticipates that an additional \$350.00 will be generated in rent revenue to the City.

**Recommendation:** Adopt a resolution approving an agreement between the City of Placerville and El Dorado County Certified Farmer's Market Association to conduct a Farmer's Market on City property and authorize the Director of Community Services to execute the same.

Attachments – Farmers Market Agreement

M. Cleve Morris, City Manager

Steve Youel, Director of Community Services

Dave Warren, Director of Finance

## LEASE

The CITY OF PLACERVILLE, hereinafter referred to as "Landlord," hereby leases to EL DORADO COUNTY CERTIFIED FARMER'S MARKET ASSOC., hereinafter referred to as "Tenant," those certain premises, herein called "said premises," more particularly described as follows: The Ivy House parking lot located at 595 Main Street., Placerville.

### TERM

1. The term of this Lease shall commence on the first Saturday in May 2015, at 6:00 a.m., and end on the last Saturday prior to Thanksgiving in November 2015, at 1:00 p.m., hereinafter called the "leased term," unless sooner terminated as herein provided. Provided that Tenant submits to Landlord each year, at least 120 days prior that year's commencement of the leased term, a special event application with the City of Placerville Department of Community Services, this Lease shall automatically renew each year after the initial year for one (1) additional year. The leased term for each year shall commence on the first Saturday in May of each year, and end on the last Saturday prior to Thanksgiving of each year, upon the same terms and conditions set forth herein, unless either party serves written notice to the non-terminating party of their intent not to renew this Lease by February 1<sup>st</sup> of each consecutive year. Service shall be deemed completed when deposited in U.S. registered mail or personally delivered.

### BASIC RENT

2. A. Tenant agrees to pay Landlord as the rent for the leased premises, the sum of One Hundred Dollars (\$150.00) per month, or any portion thereof, due and payable to the City of Placerville on or before the first day of each month. There shall be no reduction in rent for any partial months. Payment shall be made to Landlord at 549 Main Street, Placerville, California 95667.

B. Tenant shall pay Landlord upon the execution of this Lease Agreement, the sum of Two Hundred Fifty Dollars (\$250.00) as and for a security deposit. Said deposit may be comingled with Landlord's other funds and shall bear no interest to Tenant, and may be deposited in an interest bearing account with Landlord's other funds. The security deposit shall be used to ensure that the leased premises

are left in a clean and orderly condition with all refuse removed at end of each market day, and that at the time of termination of this tenancy, the leased premises are left in a clean and orderly condition with all refuse removed. If at any time the leased premises are not left in such condition, Landlord may pay the costs of cleaning up the leased premises out of the said deposit, and immediately demand replacement of the said security deposit, and it shall be the obligation of Tenant to immediately, that is within five (5) days, replace the said security deposit with Landlord. At the termination of this Lease Agreement or any extension thereof, any unused portion of the security deposit shall be returned to Tenant.

### USE OF PREMISES

3. Said premises shall be used to provide a downtown location for a certified farmers' market where producer-direct agricultural products will be sold according to California Administrative Code, Title 3, Chapter 3, Group 4, Article 6.5 on Direct Marketing, and Tenant shall not permit the premises or any part thereof to be used for any other use or uses without the express written consent of Landlord. Use of other public facilities will require compliance with City policies and may cause additional fees. Food and/or beverage service may require County Health Department approval. Serving alcohol will require approval by the Chief of Police and issuance of a license by the State of California Alcoholic Beverage Control and may also require City council approval. Events with amplified sound may require review and approval of Public Safety and Community Development Departments.

A. The intent of this Lease is to provide a certified farmers' market selling agricultural products and kitchen and garden items. It is understood that artisan/commercial participants enhance the market and their participation defrays expenses from the farmers, they too can be interpreted by the public negatively. To minimize that potential, the market management (tenant) will limit the percentage of artisan/commercial participants to 10% of the total market plan.

B. Landlord makes no representations or warranties as to the premises complying with Americans with Disabilities Act (ADA) requirements. Subject to Paragraph 6 of this agreement, Tenant shall comply with any applicable ADA requirements.

### PROHIBITED USES

4. Tenant shall not commit, nor permit the commission of any acts on said premises, or use or permit the use of said premises in any way that:

A. violates or conflicts with any law, statute, ordinance, governmental rule or regulation, whether now in force or hereinafter enacted, governing said premises;

B. obstructs or interferes with the rights of other tenants or occupants of any adjoining property owned by Landlord, or injures or annoys them; or

C. constitutes the commission of waste on said premises or the commission or maintenance of a nuisance as defined by the laws of the State of California.

#### ALTERATIONS

5. Tenant shall make no alterations to the premises, nor construct any buildings or other improvements on the premises without first having obtained the written consent of the Landlord.

#### NO ASSIGNMENT OR SUBLEASING

6. Tenant shall not sublet said premises or any part thereof or allow any other persons to occupy or use said premises or any part thereof without the prior written consent of Landlord. Consent by Landlord to one assignment, subletting or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting or occupation and use by another person. Any encumbrance, assignment, transfer or subletting without the prior written consent of Landlord, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of Landlord, terminate this Lease. Vendors at the leased premises are permitted by invitation only. Invited and participating vendors are required to abide by Tenant's rules and regulations, a copy of which has been provided to Landlord and is attached to this lease agreement and marked Exhibit "A". Vendors shall execute a copy of said rules acknowledging that they have read them and will abide by them. Landlord agrees that Tenant may allow the use of the premises by invited vendors provided said vendors abide by Tenants rules and regulations (Exhibit "A") as well as any applicable terms of this lease agreement and that such use is not in violation of this lease agreement. Any vendor in violation of this lease agreement or Tenant's rules and regulations shall be immediately removed from the leased premises by Tenant. Landlord's agreement to allow Tenant to permit vendors to utilize stalls on the leased premises is conditioned on each vendor agreeing to abide by said Rules and executing the Participation and Hold Harmless Agreement, copies of which are attached hereto, marked exhibits "A" and "B" and incorporated herein by reference.

### INDEMNIFICATION

7. Tenant shall indemnify and hold Landlord and the property of Landlord, including said premises, free and harmless from any and all liability, claims, losses, damages, or expenses, including counsel fees and costs, arising by reason of the death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by:

- A. any cause whatsoever while such person or property is in or on said premises or in anyway connected with said premises or with any personal property on said premises;
- B. some condition of said premises;
- C. some act or omission on said premises of Tenant or any person in, on or about said premises with the permission of Tenant; or
- D. any matter connected with Tenant's occupation and use of said premises.

### INSURANCE COVERAGE

8. Tenant shall carry and maintain during the entire term hereof at Tenant's sole cost and expense, broad form commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000) per person and per occurrence. Landlord shall be named as an additional insured on said policy. Tenant shall provide to Landlord the certificate and additionally insured endorsement that said insurance is in full force and effect, together with commitment by the said insurance agency to advise Landlord not less than ten (10) days prior to any change of the terms or termination. Tenant shall be responsible for insuring its own personal property, and no responsibility for insuring the same shall be held against Landlord. The policy of liability insurance hereinabove set forth, together with the personal property, shall have a waiver of subrogation rights providing that the said insurance company waives subrogation or consents to waive the right of recovery against Landlord, and Tenant does hereby agree that Tenant shall not make any claim against or seek to recover from Landlord any loss or damage to Tenant's property or the property of others as a result of fire or other hazards covered by any insurance agency.

### NOTICES

9. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, Landlord or Tenant, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Landlord at: 549 Main Street, Placerville, California 95667, or to Tenant at: P.O. Box 981, Placerville, California 95667. Either party, Landlord or Tenant, may change their address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

### ATTORNEY'S FEES

10. Should any litigation be commenced between the parties to this Lease concerning said premises, this Lease, or the rights and duties of either in relation thereto, the party, Landlord or Tenant, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in the litigation, which shall be determined by the Court in such litigation or in a separate action brought for that purpose.

### TIME IS OF ESSENCE

11. Time is expressly declared to be the essence of this Lease.

### WAIVER

12. The waiver of any breach of any of the provisions of this Lease by Landlord shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or of another provision of this Lease.

### SOLE AND ONLY AGREEMENT

13. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting said premises or the leasing of said premises to Tenant, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting said

premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are null and void.

SIGNAGE

14. A. Placement of signs advertising the event will be subject to Community Development Department approval. Placement of fliers on parked cars in the City or on utility poles is prohibited.

B. Landlord shall install "No Parking" signs provided by the Tenant prior to the first Saturday in May and take down "No Parking" signs after the last Saturday in November.

C. At the request of the Landlord, Tenant is required to replace damaged or aged "No Parking" signs at the sole expense of the Tenant.

D. Landlord shall not be responsible for unauthorized vehicles parked on the leased premises nor shall Landlord be responsible for removal of such vehicles.

D. Landlord shall be responsible for removal of unauthorized vehicles by the following procedure. The tenant shall provide "no parking" signage, for the Landlord to install before May of each year and remove after mid-November market closure. The signage should provide for no parking on the leased premises from 6:00 AM Saturday\_\_\_\_\_to \_2:00 PM Saturday\_\_\_\_\_ and shall be in the form and content as required by law including notifying the public of the procedure to retrieve towed vehicles, The tenant will contact the Placerville Police Department and request the removal of all unauthorized vehicles.

Dated:\_\_\_\_\_

Dated:\_\_\_\_\_

LANDLORD:  
CITY OF PLACERVILLE

TENANT:  
El Dorado County Certified Farmer's Market Assoc.

By:\_\_\_\_\_

By:\_\_\_\_\_

Cleve Morris, City Manager

Print Name:\_\_\_\_\_

RESOLUTION NO \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PLACERVILLE, ENTERING INTO AN AGREEMENT WITH EL  
DORADO COUNTY CERTIFIED FARMER'S MARKET ASSOCIATION TO  
CONDUCT A FARMER'S MARKET ON CITY PROPERTY AND AUTHORIZE  
THE DIRECTOR OF COMMUNITY SERVICES TO EXECUTE THE SAME**

**WHEREAS**, the City of Placerville desires to provide for a certified farmer's market located within the Placerville City limits; and

**WHEREAS**, El Dorado County Certified Farmer's Market Association has been determined to be the best tenant to provide said service; and

**WHEREAS**, El Dorado County Certified Farmer's Market Association will lease City property at the rate of \$150.00 per month; and

**WHEREAS**, El Dorado County Certified Farmer's Market Association has agreed to the terms and conditions set forth within the attached agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Placerville approves a lease agreement with El Dorado County Certified Farmer's Market Association to conduct a farmer's market on city property and authorize the director of community services to execute the same

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on March 24, 2015 by Councilmember \_\_\_\_\_ who moved its adoption. The motion was seconded by Councilmember \_\_\_\_\_.

The motion was passed by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
Mayor, Patricia Borelli

**Attest:**

\_\_\_\_\_  
Susan Zito, CMC, City Clerk