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Item No. 13

FEB 20 2019

City of South Gate
CITY COUNCIL

CITY OF SOUTH GATE
OFFICE OF THE CITY MANAGER

9:00am

AGENDA BILL

For the Regular Meeting of: February 26, 2019
Originating Department: Parks & Recreation

Department Director:


Paul L. Adams

City Manager:


Michael Flad

SUBJECT: AMENDMENT NO. 2 TO CONTRACT NO. 2701 FOR THE OPERATION OF THE FARMERS MARKET AT SOUTH GATE PARK

PURPOSE: This item was continued from the regularly scheduled City Council meeting of February 12, 2019, to allow time to meet and discuss extending the agreement with Harbor Area Farmers Markets (HAFM) to operate the Farmers Market at South Gate Park for an additional five years.

RECOMMENDED ACTIONS:

- a. Approve Amendment No. 2 to Contract No. 2701 with Harbor Area Farmers Markets to operate the Farmers Market at South Gate Park for an additional five year term;
- b. Authorize the Mayor to execute Amendment No. 2 in a form acceptable to the City Attorney; and
- c. Authorize the Director of Parks & Recreation to execute any additional documents as may be required to properly implement and manage the Farmers Market.

FISCAL IMPACT: The current agreement requires HAFM pay the City 1% of their gross sales from each market day. This fee is used to cover the additional maintenance costs and staff time associated with the market. Based upon past performance, the market fee paid to the City averages approximately \$5,000 per year. It is expected that this fee would remain consistent for the additional years of this extension.

ALIGNMENT WITH COUNCIL GOALS: None.

ANALYSIS: HAFM has been operating the City's Farmers Market for eight years. Although there have been few complaints, there have been many positive comments regarding the quality of the Farmers Market. HAFM has done a great job of matching appropriate vendors with the community and continues to maintain a good selection of high quality produce at the Farmers Market. HAFM has also added the ability to take EBT or "food stamps" at the Farmers Market, making it more accessible to residents.

BACKGROUND: For the past 35 years, the City has had a Farmers Market at South Gate Park (Market). On January 12, 2011, the City Council approved Contract No. 2701 with Harbor Area Farmers Markets for a three year term. On January 28, 2014, the City Council approved Amendment No.1 to Contract No. 2701, extending the term for an additional five (5) years, which will expire on

June 30, 2019. Staff and the community have been very happy with HAFM and the Market has experienced significant growth, both in vendors and patrons under HAFM's management.

The Market represents an important resource for the community and residents. The local availability of grower direct produce which is fresh, of high quality and reasonably priced is important for the health of our residents. Further, a Farmers Market, if properly operated, can provide additional benefits such as availability of certified organic produce, fresh local products such as baked goods, honey, flowers and access to other local resources. South Gate's Farmers Market has long been a center of community life and a weekly opportunity for community members to meet and socialize while shopping for healthy food for their families.

On Tuesday, February 19, 2019, Mayor Bernal and Director Adams met with Kelli Johnson, Harbor Area Farmers Markets' Market Manager, to discuss the Farmers Market scheduling, as well as ideas for potential enhancements or expansion of the existing Farmers Market. A very positive discussion ensued and, although Ms. Johnson explained some of the limitations facing the City's Farmers Market, Ms. Johnson was also very receptive to attempting some of the ideas discussed. If the City Council approves Amendment No. 2, City staff will work with HAFM staff to plan and implement new programs such as a Farm Box pick-up program which allows customers to place orders in advance and then pick-up their produce after Farmers Market hours at a designated location; plan for the Farmers Market to participate in City sponsored special events; coordinate greater collaboration with local schools; and will seek more ways for the Farmers Market to interact with the City's youth programs.

ATTACHMENTS: Proposed Amendment No. 2
Amendment No. 1
Contract No. 2701

**AMENDMENT NO. 1 TO CONTRACT NO. 2701
LICENSE AGREEMENT FOR OPERATION OF A FARMERS MARKET AT
SOUTH GATE PARK BETWEEN THE CITY OF SOUTH GATE AND
HARBOR AREA FARMERS MARKETS**

THIS AMENDMENT NO. 1 TO THE LICENSE AGREEMENT FOR OPERATION OF A FARMERS MARKET AT SOUTH GATE PARK BETWEEN THE CITY OF SOUTH GATE AND HARBOR AREA FARMERS MARKETS ("Amendment No. 1") is dated for reference purposes January 28, 2014 but is effective as of the date specified in Section 3 below, and is made and entered into by and between the CITY OF SOUTH GATE ("City") and HARBOR AREA FARMERS MARKETS ("MARKET").

RECITALS:

WHEREAS, effective January 12, 2011, the CITY and MARKET entered into that certain "License Agreement for Operation Of A Farmers Market At South Gate Park" ("Agreement"); and

WHEREAS, CITY and MARKET desire to extend the Agreement for a term of five (5) years, and to otherwise leave in full force and effect the terms and conditions thereof; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. EXTENSION OF TERM.

The term of the Agreement is extended for an additional five (5) years, from July 1, 2014 through and including June 30, 2019.

2 EFFECT OF AMENDMENT.

Except as expressly amended herein, all other terms and conditions of the Agreement, and any attachments and exhibits thereto, shall remain in full force and effect.

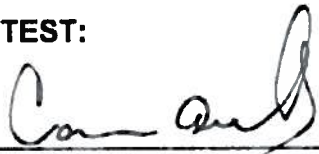
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3. **EFFECTIVE DATE.**

Unless otherwise specified herein, this Amendment No. 1 shall become effective as of the date when CITY approves this Amendment No. 1.


IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed and attested by their respective officers hereunto duly authorized.

ATTEST:



Carmen Avalos, City Clerk
(SEAL)

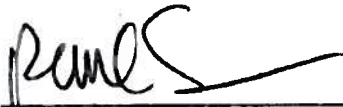
CITY OF SOUTH GATE, a public body,
corporate and politic



Gil Hurtado, Mayor

Dated: 01/29/2014

APPROVED AS TO FORM:



Raul F. Salinas, City Attorney

HARBOR AREA FARMERS MARKETS



Title: Exec. Director of S&K

Dated: 2/16/14

**LICENSE AGREEMENT FOR OPERATION OF
A FARMERS MARKET AT SOUTH GATE PARK
BETWEEN THE
CITY OF SOUTH GATE
AND
HARBOR AREA FARMERS MARKETS**

THIS LICENSE AGREEMENT, ("AGREEMENT" herein) effective as of January 12, 2011, is made and entered into by and between the City of South Gate, a municipal corporation ("CITY" herein), and South Coast Interfaith Council, a California non-profit corporation, dba Harbor Area Farmers Markets, Inc. ("MARKET" herein).

R E C I T A L S:

- A. Whereas, MARKET desires to use that portion of South Gate Park generally described as Parking Lot Number 3 (Three) for the operation of a Certified Farmers Market and related activities, said area is generally diagrammed on the map attached hereto as Exhibit A and incorporated herein by this reference ("MARKET AREA" herein); and
- B. Whereas, CITY desires to enhance the availability of reasonably priced, grower direct fresh produce within the community for the health and well being of its residents; and
- C. Whereas, CITY desires to continue and enhance the 25 year history of farmer's markets held in this location and the community benefits those activities provide, including availability of reasonably priced fresh produce and products, education of the community on the selection, preparation and benefits of fresh produce, enhanced community health and wellbeing and leisure and social values of such community events; and
- D. Whereas, City is willing to grant a license to a non-profit organization for operation of such a market on the terms and conditions herein stated.

NOW THEREFORE, IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1.0 GRANT OF NONEXCLUSIVE LICENSE

CITY hereby grants to MARKET a temporary, revocable and nonexclusive license to enter upon the MARKET AREA and to use said property at the times and dates agreed upon by MARKET AND CITY, on the terms and conditions, herein provided.

1.1 Revocability

CITY may in its sole and unfettered discretion, revoke this license and/or terminate the agreement without cause upon fifteen (15) days advance written notice.

1.2 Nonexclusive

CITY may grant permission to other persons to use the same property, which is the subject matter of this Agreement at the same times as are herein specified without other or further notice to MARKET.

1.3 Temporary

Unless sooner revoked, rescinded, or terminated, this Agreement shall automatically expire as specified under Section 3: TERM OF AGREEMENT.

2.0 PERMISSABLE USE

Licensee shall use, under terms and conditions consistent with those set forth in this Agreement, the parking lot for the sole purpose of conducting a Certified Farmers MARKET and other associated activities as specifically approved by CITY, and for no other purpose. All sales stalls and MARKET AREA shall be located in the above-described parking lot.

Each seller at the MARKET shall be regulated by and conform to all applicable regulations in Title 3, Article 6.5 of the California Code of Regulations and subsequent amendments thereto, and other applicable regulations of the State of California, the County of Los Angeles, and the City of South Gate.

In its use of South Gate Park, Licensee and sellers shall not in any manner interfere with or impede persons holding local area vending permits. In addition, Licensee and sellers shall not interfere with or impede access for emergency vehicles.

A sale during a Sales Event may only be made to an individual purchasing for final consumption by such individual or such individual's family or such individual's invitees. Sales in quantities that may not reasonably be expected to be consumed by the purchaser, or the purchaser's immediate family or invitees, within the shelf life of the Qualified Produce, shall be prohibited.

3.0 TERM OF AGREEMENT

This agreement will become effective on January 17, 2010 and will remain in effect for a period of two (2) years from said date unless otherwise expressly extended. The CITY, at its discretion, may choose to extend this agreement to a maximum of three (3), one (1) year extensions.

4.0 HOURS OF OPERATION

The license herein granted shall be valid only during days and hours as agreed to in advance by City. Initial hours of operation shall be on Monday of each week during the following hours: between the hours of 10:00 a.m. and 3:00 p.m. for the purpose of conducting the sales activity ("Sales Event" herein). MARKET and its vendors will be given access to the MARKET AREA at least two hours prior to MARKET opening for the purpose of preparing for the Sales Event and up to two hours after closing time for the purpose of closing down the Sales Event, and cleaning up the MARKET AREA and adjacent areas.

No sales activity shall be conducted except during the permissible hours for a Sales Event. Days and times may be modified at any time by mutual agreement of the parties.

5.0 CITY AGENT

The Director of Parks & Recreation, or his/her designee (DIRECTOR), for the purposes of this Agreement, is the agent for the CITY; whenever approval or authorization is required, MARKET understands that the Director of Parks & Recreation, or his/her designee, has the authority to provide that approval or authorization.

6.0 SPECIAL TERMS AND CONDITIONS RELATING TO SALES EVENTS

6.1 Signs

Signs shall not be displayed except in a size, construction type, aesthetic nature, place and duration as may be approved by the DIRECTOR. Prior to display, all signs shall have received final approval in accordance with the provisions of this paragraph.

6.2 Sale of Qualified Produce by Weight

Any vendor selling Qualified Produce by weight shall have its scales sealed by the County Sealer of Weights and Measures.

6.3 Prices

All prices shall be clearly posted. Collusion among growers to raise prices or to exert any influence, pressure or persuasion upon a vendor to increase prices is strictly forbidden and shall be grounds for revocation of the license.

6.4 Health Conditions

MARKET shall meet the minimum health conditions imposed upon it by the Los Angeles County Health Commissioner and all further and additional conditions imposed for health reasons by the DIRECTOR.

6.5 Cleanliness of the Grounds

MARKET shall, at its sole expense, cause the MARKET AREA, and areas adjacent thereto which may have become littered by the conduct of business at the MARKET Area, including entrances, exits and parking used by the MARKET, to be kept clean and maintained at all times in a neat, clean and presentable manner, free of all paper, debris, dropped or discarded produce, and all other trash. In addition to the foregoing requirements, said areas shall be absolutely free of litter, regardless of cause after each use.

6.5.1 CITY's Right to Bill for Cleaning

If MARKET fails to clean the MARKET AREA in accordance with the requirements herein specified, and CITY is required to provide cleaning services,

MARKET shall pay to CITY the CITY's costs to clean the MARKET AREA within three (3) days of billing same. This Agreement shall be suspended during the period of time any such billing remains outstanding after presentation.

6.5.2 MARKET's Duty to Provide for Separate Trash Removal

MARKET shall not use, or permit customers or vendors to use, CITY's trash receptacles for the disposal of trash or litter generated or brought to the MARKET AREA, or in connection with a Sales Event, including any material that is defined as "hazardous" under any state or federal law regulating same. MARKET shall arrange for adequate trash receptacles and for solid waste removal from the MARKET AREA after each Sales Event.

6.5.3 Pollution Discharge

Licensee shall be responsible for ensuring that the MARKET is operated and maintained in compliance with the provisions of the National Pollution Discharge Elimination System (NPDES).

6.6 Modifications

MARKET shall make no repairs of or modifications to the MARKET AREA, and shall make no improvements thereon without prior written consent from the CITY.

6.7 Title to Abandoned Property other than Trash

All property, including personal property, fixtures and utility installations within the MARKET AREA, shall, unless removed by MARKET at the conclusion of each Sales Event, be deemed to be abandoned, and shall become property of the CITY.

6.8 Real Property Taxes

MARKET shall pay any processing interest or real property tax applicable to the MARKET AREA which may be assessed during the term of this agreement. All such payments shall be made at least ten (10) days prior to the delinquency date. MARKET shall promptly furnish CITY with satisfactory evidence that such taxes have been paid. If any such taxes paid by MARKET shall cover any period of time prior to or after the expiration of the term hereof, MARKET's share of such taxes shall be equitably prorated to cover only the period of time within the tax year during which this Agreement is in effect. If MARKET shall fail to pay any such taxes, CITY shall have the right to pay the same, in which case MARKET shall repay such amount to CITY with MARKET's next installment payment, together with interest at the maximum rate then permitted by law.

6.9 Utilities

MARKET shall pay for all water, gas, heat, light, power, telephone, and other utilities and services supplied to the MARKET AREA, together with any taxes thereon. If any such services are not separately metered to MARKET, MARKET shall pay a reasonable proportion of all charges jointly metered with other premises, as determined by CITY.

6.10 Assignments and Subletting

MARKET shall not voluntarily or by operation of law assign, transfer, mortgage, pledge, or otherwise transfer or encumber all or any part of MARKET's interest in this Agreement or in the MARKET AREA.

6.11 Right of Refusal of any Vendor or Employee

The CITY, at its sole discretion and for its own purposes, may refuse any vendor from participation in the Farmer's Market or may request that any employee of the MARKET not be assigned or used in connection with the South Gate Farmer's Market. Determination by the DIRECTOR will be final.

7.0 INSURANCE.

MARKET shall submit to the CITY certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The MARKET shall require all subcontractors and vendors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the MARKET in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by CITY.

2) Name and list as additional insured the CITY, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the MARKET pursuant to the terms of this Agreement.

8.0 INDEMNIFICATION

MARKET shall indemnify CITY, and its elected officials, officers and employees, and shall hold CITY harmless, and shall defend CITY upon request and tender of defense, against any and all liability and loss, including but not limited to reasonable attorney's fees, which CITY may incur because of injury to any person or damage to or destruction of any property caused by MARKET, its agents, employees, manager, owners, members, vendors, customers, or invitees.

9.0 COMPENSATION

9.1 To CITY

Licensee agrees to pay to the CITY at the close of each calendar month in which market business occurs an amount equal to 1% of the total market income for each market day of that month, or the sum of \$75 (Seventy Five Dollars) for each market day, whichever is more. This fee shall be judged in arrears on the last day of the following month.

9.2 To MARKET

MARKET will receive no compensation from the City for operation of the market or other services provided by MARKET in association with the Farmer's Market activities unless agreed to in advance by the DIRECTOR in writing. MARKET may not charge admission or parking fees to customers of the Farmer's Market.

MARKET may charge vendors either a flat fee or a percentage of their gross sales, for their participation as a vendor in the Farmer's Market. Fees charged by MARKET will be consistent with fees charged by other market operators in the area and must be approved by the DIRECTOR. MARKET must notify CITY at least thirty (30) days in advance when modifying the approved fees. MARKET is solely responsible for the collection and accounting of any fees it may charge.

10.0 BUSINESS LICENSE

It shall be the responsibility of MARKET, at its sole cost and expense, to obtain any business license and to arrange for any inspections required by the CITY.

11.0 COMPLIANCE WITH LAWS AND PARK RULES

MARKET and all its vendors shall comply with all applicable laws, ordinances, rules and regulations of all governmental agencies, including, without limitation, all CITY and Park rules and regulations.

12.0 NON-DISCRIMINATION.

The MARKET shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

13.0 CITY'S OBLIGATIONS

Except for the obligations of CITY specifically set forth in this Agreement, it is intended by the parties hereto that CITY shall have no obligation, in any manner whatsoever, to repair and maintain the MARKET AREA, nor any structural improvements located thereon, nor any equipment now or hereafter located therein. MARKET expressly waives the benefit of any statute now, or hereafter, in effect which would entitle MARKET to make repairs at CITY's expense.

13.1 Condition of Premises

MARKET shall accept the MARKET AREA in its condition existing as of the date of each Sales Event immediately preceding occupancy by MARKET or its vendor, customers, employees or agents. MARKET acknowledges that neither CITY, nor any representative of the CITY, has made any representation or warranty as to the present or future suitability of the MARKET AREA for the conduct of MARKET's business. Furthermore, CITY makes no representations as to whether hazardous materials or toxic waste may be located on or near the subject premises.

13.2 Notification of unsafe conditions

In the event that the MARKET believes that an unsafe condition exists as a result of their inspection of the MARKET AREA prior to any scheduled SALES EVENT, it is the responsibility of the MARKET to notify the DIRECTOR of such conditions immediately and ensure that MARKET activities, employees, vendors and members of the public are prevented from entering any area which may be deemed hazardous or unsafe by the MARKET until such conditions may be appropriately corrected.

13.3 Security Measures

MARKET acknowledges that nothing in this Agreement obligates the CITY to provide guard service or other security measures, and that CITY shall have no obligation whatsoever to provide same. MARKET assumes all responsibility for the protection of MARKET, its vendors, agents and invitees, from acts of third parties. CITY may require that guard service be provided during Sales Events, and if so, the cost of providing same shall be borne by MARKET.

14.0 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement shall be constructed as creating a partnership or a joint venture, it being understood that each of the parties hereto is responsible for its own separate debts and obligations. The MARKET shall have no power to incur any debt or obligation for or on behalf of the CITY. Neither the CITY nor any of its officers or employees shall have any control over the conduct of the MARKET, or any of the MARKET's employees, except as herein set forth, and the MARKET expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the CITY, it being distinctly understood that the MARKET is and shall at all times remain to the CITY a wholly independent contractor and the MARKET obligations to the CITY are solely such as are prescribed by this Agreement.

15.0 MARKET RULES

Additional MARKET rules are attached hereto as Exhibit D and are incorporated herein by this reference. Such rules may be modified by the DIRECTOR from time to time at CITY's sole discretion. CITY will notify MARKET in writing not less than ten (10) days prior to the implementation of such changes.

16.0 FRUIT AND VEGETABLE QUALITY CONTROL STANDARDIZATION

State of California Department of Food and Agriculture Fruit and Vegetable Quality Control Standardization Regulations are attached hereto as Exhibit C and are incorporated herein by this reference.

17.0 NOTICE TO PARTIES

Any notice required or permitted under this Agreement to be given by either party may be given by depositing in the United States mail, postage prepaid, first class, a notice addressed as follows:

To CITY: City of South Gate
8650 California Avenue
South Gate, CA 90280
Attn: Paul L. Adams, Parks & Recreation Director

To MARKET: South Coast Interfaith Council, a California non-profit corporation,
dba Harbor Area Farmers Markets, Inc.
759 Linden Avenue
Long Beach, CA 90813
Attn: Dale C. Whitney, Market Manager

18.0 GENERAL PROVISIONS

18.1 Legal Construction.

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

18.2 Waiver; Remedies Cumulative.

Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

18.3 Mitigation of Damages.

In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

18.4 Partial Invalidity.

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

18.5 Attorneys' Fees.

The parties hereto acknowledge and agree that each will bear his or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

18.6 Entire Agreement.

This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

18.7 Non-Assignability.

The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

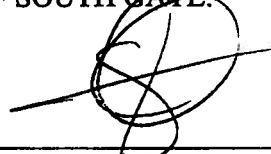
18.8 Severability

The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.

18.9 Authorization

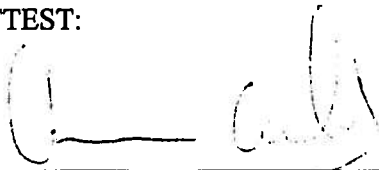
Each of the parties hereto acknowledges that the persons signing below are duly authorized to bind the parties to the obligations set forth in this agreement.

CITY OF SOUTH GATE:



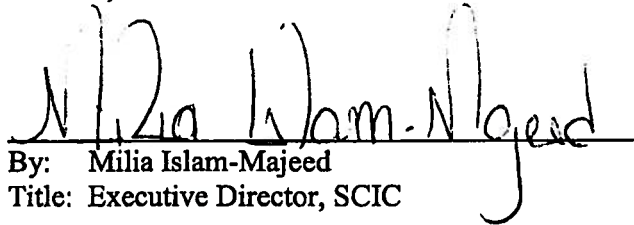
Gregory Martinez, Mayor

ATTEST:



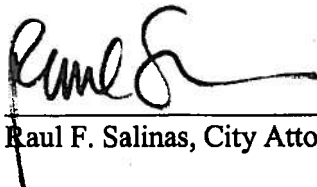
Carmen Avalos, City Clerk
(Seal)

South Coast Interfaith Council, a California non-profit corporation, dba Harbor Area Farmers Markets, Inc.



By: Milia Islam-Majeed
Title: Executive Director, SCIC

APPROVED AS TO FORM:



Raul F. Salinas, City Attorney