

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF CHICO  
GRANTING A FRANCHISE FOR USE OF A PORTION OF CITY  
STREETS, SIDEWALKS OR OTHER CITY PROPERTY –  
CHICO CERTIFIED FARMERS MARKET, MUNICIPAL  
PARKING LOT NO. 1**

WHEREAS, the City Council granted the Chico Certified Farmers' Market (the "Franchisee") a franchise for the exclusive use of a portion of Municipal Parking Lot No. 1 in 1993, pursuant to Ordinance No. 1946; and

WHEREAS, the Franchisee has operated a farmer's market on that portion of Municipal Parking Lot No. 1 pursuant to ordinances adopted by the City Council from 1993 to the present day; and

WHEREAS, the Franchisee has submitted an application for the City Council to grant a franchise for the continued exclusive use of that portion of Municipal Parking Lot No. 1.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Chico does hereby adopt the following ordinance:

Section 1. Repeal of Franchises. All previous farmers' market franchises granted to Franchisee are hereby repealed and no longer of any force and effect as of December 31, 2020.

Section 2. Grant of Franchise. Pursuant to Chapter 14.60 of the Chico Municipal Code, a franchise is hereby granted to the Chico Certified Farmers Market pursuant to the terms and conditions described in the Franchise Agreement attached hereto as Attachment "A" and incorporated herein by reference.

Section 3. Environmental Determination. The Council finds that the adoption and implementation of this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. Further, to the extent this ordinance is considered a project under CEQA, it is categorically exempt

1 under CEQA Guidelines section 15304(e) as a minor, temporary use of land having negligible or  
2 no permanent effects on the environment, and under CEQA Guidelines section 15311(c) as only  
3 involving placement of temporary structures “in generally the same locations from time to time  
4 in... facilities designed for public use.”

5 Section 4. Severability. If any section, subsection, sentence, clause, phrase or word of this  
6 Ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent  
7 jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

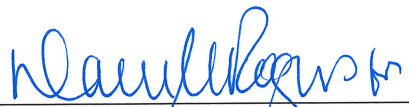
8 Section 5. Effective Date. This Ordinance shall be effective thirty days following adoption.

9  
10 Section 6. Certification. The City Clerk shall certify to the passage and adoption of this  
11 Ordinance and shall cause the same to be published or posted in the manner required by law.

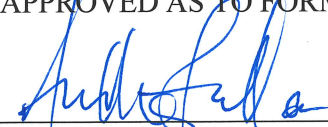
12 THE FOREGOING ORDINANCE was adopted by the City Council of the City of Chico,  
13 California at its City Council meeting held this August 25, 2020, by the following votes  
14 to wit:

15  
16 AYES: Huber, Morgan, Ory, Reynolds, Stone, Brown  
17 NOES: None  
18 ABSENT: None  
19 ABSTAIN: None  
20 DISQUALIFIED: Schwab

21 ATTEST:

22  
23   
24 \_\_\_\_\_  
Deborah R. Prosson, City Clerk

APPROVED AS TO FORM:

25  
26   
27 \_\_\_\_\_  
28 Andrew L. Jared, City Attorney\*  
\*Pursuant to The Charter of the City of Chico, Section 906(E)

**FRANCHISE AGREEMENT BY AND BETWEEN THE CITY OF CHICO AND THE CHICO  
CERTIFIED FARMERS' MARKET**

**THIS FRANCHISE AGREEMENT** ("Agreement") is made and entered into effective 1<sup>st</sup> day of January, 2021 ("Effective Date") by and between the CITY OF CHICO (hereinafter, "City") and the CHICO CERTIFIED FARMERS' MARKET, INC., a non-profit corporation (hereinafter, "CCFM").

**WHEREAS**, in 1993, and pursuant to Ordinance No. 1946, the City granted CCFM a franchise for the exclusive use of a portion of Municipal Parking Lot No.1 for the operation of a farmers' market of benefit to the community; and

**WHEREAS**, Ordinance No. 1946, and the franchise awarded thereunder, was subsequently amended from time to time by way of Ordinance Nos. 1993, 2124, 2171, 2297, and 2413, and corresponding franchise agreements (cumulatively the "Farmers' Market Franchises"); and

**WHEREAS**, on June 17, 2014, a voter initiative titled "Repeal of Existing and Grant of New Franchise to use Municipal Parking Lot 1 for a Farmer's Market" was adopted by the City Council to repeal the terms of the existing franchise between the City and CCFM (hereinafter sometimes referred to jointly as the "Parties," and individually as a "Party"), and grant CCFM a new franchise on the terms and conditions set forth in the initiative through December 31, 2020; and

**WHEREAS**, on August 4, 2020, the City Council conducted a hearing on awarding of this franchise pursuant to CMC 14.60, granting CCFM a new franchise for use of Municipal Parking Lot No. 1 for the operation of a farmers' market of benefit to the community; and

**WHEREAS**, on August 4, 2020, the City Council introduced Ordinance No. \_\_\_\_ (the "Ordinance"), at a duly noticed public hearing, granting CCFM a new franchise for use of Municipal Parking Lot No. 1 for the operation of a farmers' market of benefit to the community; and

**WHEREAS**, in furtherance of the Ordinance, and consistent with the terms therein, the Parties desire to enter into an agreement to memorialize, clarify, and supplement the respective rights and obligations of the Parties with respect to CCFM's use of Municipal Parking Lot 1 for the operation of a farmers' market.

**NOW, THEREFORE**, in consideration of the terms and conditions set forth in this Agreement, and such other good and valuable consideration the receipt and sufficiency of which is expressly acknowledged by the Parties, the City and CCFM hereby mutually covenant and agree as follows:

**SECTION 1.** Recitals Incorporated. The foregoing recitals are true and correct, are a material part of this Agreement, and are therefore expressly incorporated herein this Agreement.

**SECTION 2.** Repeal Farmers' Market Franchises. As contemplated by the Ordinance, the Parties expressly agree and acknowledge that the Ordinance repeals all previous Farmers' Market Franchises, and each of them, previously awarded by the City to CCFM, and such are null and void and no longer of any force and effect after December 31, 2020.

**SECTION 3.** Pursuant to the Chico Municipal Code, including but not limited to Chapter 14.60 thereof, and in furtherance of and consistent with the Ordinance, the franchise granted to CCFM to operate a farmers' market in the City (the "Franchise") is hereby subject to the terms and conditions set forth below:

A. Findings. The City hereby finds, and CCFM guarantees, that CCFM is a nonprofit organization providing a service of general benefit to the Chico community, and that the Franchise serves the public interest.

B. Location. The Franchise is granted for the use of Municipal Parking Lot No. 1, more particularly described as the City block bounded by East 2nd Street to the north, 3rd Street to the south, Flume Street to the east, and Wall Street to the west (hereinafter, the "Sales Area"), inclusive of the sidewalks adjacent to the Sales Area (hereinafter, the "Sidewalks", and the Sales Area and the Sidewalks together hereinafter the "Franchise Area")(as depicted in Attachment A).

C. Term. The initial term of the Franchise shall commence on January 1, 2021 ("Effective Date") and shall terminate on December 31, 2028 ("Initial Term"). On each anniversary of the Effective Date, the term of the Franchise shall automatically be extended for one year unless the City shall give written notice to CCFM not less than 180 days prior to such anniversary of its election not to extend the term. Such notice, if given, may be rescinded by the City at any time prior to the expiration of the term of the Franchise and the remaining term of the Franchise shall be the same as if no such notice had been given. CCFM may terminate the Franchise at any time on not less than 30 days prior written notice to City.

D. Days and Times. The Franchise shall be valid on each Saturday throughout the Term, and only between the hours of 5:30 a.m. and 2:00 p.m. ("Hours of Operation").

E. Use of Franchise Area. During the Hours of Operation, CCFM, and any of its officers, employees, affiliates, volunteers, agents, supplies, or vendors, and any subsidiaries, affiliates, officers, employees, agents thereof, are granted the exclusive use and are authorized to use the Franchise Area only in accordance with the following:

1. Sales Area. The Sales Area shall be used for the sale of food, beverages, farm produce, farm products, nursery stock, CCFM promotional products, home produced crafts, and community events. The Sales Area shall be designated as a market sales area.
2. Sidewalks. The Sidewalks shall be kept clear, open, and unobstructed at all times for use by the general public, who shall be permitted to use the Sidewalks for any and all purposes not otherwise prohibited by law.
3. Limitation on Use. CCFM shall only use the Franchise Area for operation of a farmers' market, as further described in this Agreement and the Ordinance, and for no other purpose, except as such may be agreed to in advance by the City in writing.
4. Compliance with Applicable Laws. Nothing shall be done in the Franchise Area in violation of any federal, state, and/or local law. The Franchise Area, and the privileges exercised by CCFM pursuant to the Franchise, shall be used and exercised in compliance with all laws, specifically including but not limited to Chapter 14.60 of the Chico Municipal Code. Neither the Ordinance, the Franchise, nor this Agreement shall be deemed a waiver of the City's right to enforce applicable laws in connection with CCFM's use of the Franchise Area. CCFM and all vendors shall obtain all necessary permits, licenses, and

approvals required by applicable federal, state, and local laws prior to use of the Franchise Area.

5. Barricades. The use of the Sales Area as provided for herein shall be implemented by the installation of barricades at each end of the two (2) center aisles of the Sales Area, and as otherwise directed by the City. The responsibility for providing, maintaining, placing and removing the barricades shall be borne by CCFM at CCFM's sole cost and expense. All such responsibilities shall be carried out in accordance with written procedures which shall be prepared by CCFM and approved by City's Public Works Director - Engineering.

6. Maintenance. At the conclusion of each use of the Franchise Area, CCFM shall, at its sole cost and expense, restore the Franchise Area to the same condition as it was at the commencement of such use by performing all site cleanup, trash removal, repairs, maintenance, and other necessary actions necessary to return the Franchise Area to a condition acceptable by the City, as judged in the sole and absolute discretion of the City.

7. Exclusion of Motor Vehicles. At all times during the Hours of Operation, CCFM, by and through the use of barricades, shall exclude from the Sales Area portion of the Franchise Area all motor vehicles except private vehicles operated by vendors, emergency and public safety vehicles, including police vehicles, fire department vehicles, and ambulances, in addition to maintenance vehicles operated by the City, and other public agencies and private utility companies.

8. Parking. The City expressly reserves the right to restrict, by ordinance, regulation, permit, or other means, parking on City streets by patrons of the farmers' market so as to ensure the operation of the farmers' market does not create undue burdens on business owners in the vicinity and the general public. CCFM shall have no cause of action or claim for damages arising out of or relating to the City's exercise of its right to enact parking regulations.

F. Indemnity. CCFM shall defend, indemnify, and hold the City, and its agents, officers, and employees, harmless from and against any claim, action, liability, loss, damage, costs, or expenses (including attorneys' fees and court costs) arising from or as a result of the Ordinance, and/or the Franchise, or arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or property which are directly or indirectly caused by any acts, errors, or omissions arising from or relating to CCFM's exercise of rights or privileges under the Franchise, or any acts, errors or omissions of CCFM and its officers, employees, affiliates, volunteers, agents, supplies, or vendors. CCFM shall further defend, indemnify and hold harmless the City, and/or its agents, officers, and employees, from any claim, action, or proceeding against the City to attack, set aside, void, or annul the Ordinance or Franchise, and any permits issued by the City in furtherance thereof, on the ground that the City failed to comply with CEQA, including any claim for private attorney general fees and litigations costs claimed by or awarded to any party from the City, further that CCFM shall pay all costs or expenses (including attorneys' fees and court costs) incurred by the City in such claim, action, or proceeding.

G. General Liability Insurance Requirement. CCFM shall obtain commercial general liability insurance (occurrence policy form) from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or

better or, in the alternative, an unlicensed U.S. domiciled company or companies with an "A" rating, which provides coverage for bodily injury, personal injury and property damage liability in the amount of at least \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, with a maximum policy deductible of \$5,000.

The insurance coverage required herein shall be evidenced by a certificate of insurance with policy endorsements and shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to City at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

CCFM acknowledges and agrees that the City, its officers, boards and commissions, and members thereof, its employees and agents, are covered as additional insureds with respect to any liability arising out of the activities of CCFM as the named insured. Such additional insured status shall be evidenced by a policy endorsement executed by an authorized official of the insurer(s). A blanket endorsement which provides additional insured status to any person or organization with whom CCFM, as named insured, has entered into a written contract, such as this Agreement, shall satisfy this requirement.

The insurance coverage required herein shall be primary insurance with respect to the City, its officers, officials and employees. Any insurance or self-insurance maintained by the City, its officers, officials or employees shall be in excess of the insurance afforded to the named insured by the insurance coverage required herein and shall not contribute to any loss. Such primary insurance status shall be evidenced by a policy endorsement issued by an authorized official of the insurer(s). In the alternative, a letter issued by an authorized official of the insurer(s) and copies of the pertinent page(s) of the policy shall satisfy this requirement.

H. Franchise Fee. An annual Franchise Fee in the amount of Five Thousand Dollars (\$5,000.00) shall be due and payable annually on January 7 each year the franchise agreement is in effect. The Franchise Fee is first payable on January 7, 2021, for the first year of the Initial Term of this franchise agreement, and shall be due and payable each January 7 thereafter for successive each annual period of the agreement. Neither Franchisee nor any of its vendors shall be required to pay an additional Downtown Parking and Business Improve Area (DPBIA) license tax based on any activities undertaken under this franchise.

I. Assignment. CCFM shall not assign any rights, interests, or privileges arising out of the Ordinance or the Franchise, without advanced written consent of the City, which may be withheld for any reason or for no reason whatsoever. Any assignment not approved in advance by the City shall be null and void.

J. Duty to Maintain and Right to Inspect Records. CCFM shall generate and maintain books, records and data, including but not limited to financial records, concerning its operation of the Franchise. The City shall have the right to examine and inspect all books, records, and data with respect to the Franchise, and to make audits of all invoices, contracts, personnel records, payroll, and other data relating to matters covered under the Franchise. CCFM shall maintain such books for a period of three (3) years following the conclusion of the Term.

K. Miscellaneous.

1. Relationship of the Parties. Nothing contained in the Ordinance or the Franchise shall be construed as creating the relationship of principal and agency or of partnership or joint venture by the Parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the Parties hereto shall be deemed to create any relationship other than that of franchisor and franchisee.

2. Notice and Demands. All notices, demands, consents, and other communications provided for in this Franchise shall be in writing and shall be deemed properly given and received when actually given and received or three (3) business days after mailing, if sent by registered or certified mail, postage prepaid, addressed to the Party to receive the notice at the Party's principal place of business.

3. No Implied Waiver. No failure by the City to insist upon the strict performance of any term contained in this Franchise, no failure of City to exercise any right or remedy under this Franchise, and no acceptance of full or partial performance during the continuance of any default by CCFM, shall constitute a waiver of any right or remedy City may have at law.

4. Force Majeure. In the event either party is unable to perform its obligations under the terms of this Agreement because of acts of God, or damage to the Franchise Area reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

5. Early Termination by City. If the City terminates the agreement prior to the end of the term of the agreement, Franchisee shall be paid liquidated damages compensation for termination of any portion of the remaining term thereof, in the amount of \$40,000. Such termination shall be communicated to the Franchisee in writing at least three (3) years prior to the date of such termination is to take effect and accompanied by the full payment of the liquidated damages above. Such termination shall be based on action taken by the City Council.

6. Modification in Writing. No amendment or modification of the Franchise, and no approvals, consents, or waivers by City under the Franchise, shall be valid or binding unless in writing and executed by the Party to be bound.

7. Attorneys' Fees. Should any Party hereto retain counsel in connection with matters arising out of or related to the Franchise, including the institution of any action or proceeding concerning the negotiation, interpretation, validity, performance or breach of any provision hereof, for any legal or equitable remedy, then, if said matter is settled by dismissal of final judicial determination (which term includes arbitration), the prevailing Party shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing Party or parties for all costs and expenses incurred thereby, including court costs and attorneys' fees.

8. Entire Agreement. This Franchise shall constitute the entire agreement and understanding by and between the Parties.

IN WITNESS WHEREOF, the parties have hereunto affixed their names by their officers thereunto duly authorized.

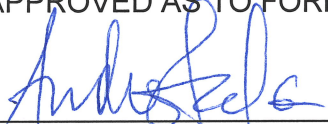
CITY OF CHICO

\_\_\_\_\_  
Mark Orme, City Manager

CHICO CERTIFIED FARMERS' MARKET

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Andrew L. Jared, City Attorney\*

\*Pursuant to The Charter of the City of Chico, Section 906(E)