

STAFF REPORT
COUNCIL MEETING DATE:
July 9, 2012

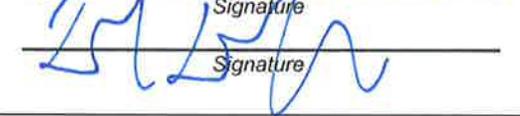
ITEM FOR COUNCIL CONSIDERATION:

Authorization of a retail local produce cart concession agreement

Report prepared by: Matthew Roberts

Department: Parks and Recreation

Reviewed by: City Manager


Signature

Signature

STAFF RECOMMENDATION:

Action Non-Action

Recommendation:

Authorize the City Manager to execute the proposed Retail Produce Cart Concession Agreement

Sample Motion:

I move to authorize the City Manager to execute the proposed retail produce Cart Concession Agreement.

I. BACKGROUND:

The City has received a request from a local farmer to allow a produce cart concession to be placed on City property located at 5103 Carpinteria Avenue. This location was purchased by the City of Carpinteria in 2008. The property is approximately 15,700 square feet in size and has 1,200 square foot building that is now leased to the Friends of the Carpinteria Library. An approximate 3,000 square foot seasonal lawn area exists in the north-west corner of the lot and the remainder of the property is parking and landscaping.



Before the city purchased the property, the private owner allowed and the City permitted a produce cart to be placed in the same location. The aerial photo above shows the property with the cart in place. At that time, the cart was well patronized and considered successful.

In order to operate a produce cart in this location, the applicant is required to have an agreement from the City to occupy the City owned location and must also obtain a Conditional Use Permit (CUP). If the City Council authorizes the City Manager to execute the proposed agreement, a CUP application may then be accepted by the City and considered by the City Planning Commission.

The proposed Concession Agreement (attached as Exhibit A) has been prepared, which City staff believes can serve the concessionaire, the general public and the City well.

II. DISCUSSION:

The proposed cart location is currently landscaped open space and could be made available for the proposed produce cart concession. The building on site is leased by the Friends of the Carpinteria Library (Friends) who operate a used book store that helps to provide financial support to the Carpinteria Branch Library. The Friends have been asked and voiced no objection to the proposal.

The proposed concession agreement contains standard provisions such as requirements to provide proof of standard insurances, allow for the City to cancel the agreement without cause with a 30 day notice, and also make specific reference to the City's future plans to improve the premises with parking, landscape and hardscape improvements in the near future when funding becomes available.

When the city commences the installation of these park improvements, the agreement allows the City to suspend or terminate the concession agreement without claims for lost business or other liability.

III. POLICY:

The proposed project allows a local agricultural grower to retail farm produce to the public. This helps improve local agricultural viability and is visitor serving. The City's General Plan recognizes coastal agriculture as being of "greater than local importance." In the Land Use element of the General Plan, Policy LU-5a states that the City shall continue to give priority to agriculture, coastal-dependent industry and visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation over residential, general industrial, or general commercial development.

IV. FINANCIAL CONSIDERATIONS:

The proposed Concession Agreement requires a nominal monthly rent to be paid to the City. The funds generated by the agreement will help offset site costs including some incremental costs associated with the concession such as water use.

V. LEGAL ISSUES:

The proposed agreement is essentially the same as the one used for beach concessions. It has been reviewed by the City Attorney.

VI. ALTERNATIVES:

The City Council could decide not to allow a concession at this location or to change any term or condition of the proposed agreement.

VII. PRINCIPAL PARTIES EXPECTED AT MEETING:

Produce Cart Operator , Katie Shepherd

VIII. ATTACHMENTS:

Attachment A Produce Cart Concession Agreement

AGREEMENT FOR SERVICES
between
City of Carpinteria
and Katie Shepherd (Concessionaire)
For a Retail Produce Cart
at 5103 Carpinteria Avenue

THIS AGREEMENT is made as of the *July XX, 2012*, by and between the City of Carpinteria (City) and Katie Shepherd, (Concessionaire), at Carpinteria, California, with reference to the following facts and intentions:

- A. City and Concessionaire desire to provide a produce cart concession at 5103 Carpinteria Avenue;
- B. To accomplish these goals City and Concessionaire desire to enter into this Agreement to provide a quality produce cart concession at the 5103 Carpinteria Avenue.

NOW THEREFORE, IT IS AGREED THAT:

- 1. Services by Concessionaire:** Concessionaire shall provide and operate a fresh produce concession cart to sell items to the general public as specified herein.
- 2. Compensation to the City:** Concessionaire shall pay 200 dollars monthly. The Concessionaire shall pay this agreed upon compensation to the City no later than the aforementioned due dates. If such payment is not made on time, the Concessionaire shall pay, in addition, a monthly service fee in the sum of 1.5% of the outstanding balance of the amount indicated for each thirty-day period following the due date, until paid in full.
- 3. Location:** The location of the food concession shall be in the northwest corner of the property located at 5103 Carpinteria Avenue as determined by the City's Parks and Recreation Director. The concession is to remain stationary during hours in which it is in operation. Also, the size of the concession equipment and the location shall not interfere with any accessible pathway.
- 4. Days and Hours of Operation:** The Produce Cart concession operation may continue through June 30, 2013, at which date this agreement expires. However, the concessionaire may be granted an extension of this agreement upon mutually agreed upon terms. Under no circumstances can the operation occur before 7:00 a.m. or after 9:00 p.m. daily. In the event that the Concessionaire does not operate at the specified site for fourteen (14) consecutive days. The contract may be deemed by the City to be terminated

and in the event of such termination, concessionaire will remain liable for its full compensation to City as set forth in Section 2 above.

5. Term of Agreement: The term of this agreement shall begin on July 1, 2012, and continue for twelve (12) months and shall end on June 30, 2013. However, if the Concessionaire has consistently complied with the Carpinteria Municipal Code provisions, Administrative Regulations or State and County Health and Safety Codes during the term of this agreement, and the concessionaire may be offered an extension of this term for as many as two additional one year terms by a written extension at the City's sole discretion. This extension will be available only at a rate of 103% of the previous period's compensation.

6. Interruption of Business: The Concessionaire agrees that no claims of damages, loss of business, or loss of income either direct or indirect shall be made against the City in the event the location becomes unsuitable or unavailable for use by the Concessionaire due to any circumstance. The City intends to make site improvements to the location when construction funds become available. Such improvements may result in temporary or permanent loss of the Location for use by Concessionaire. Concessionaire shall not be liable for monthly compensation to the City when the Location is not available due to City Construction activities.

7 Health Permits: It is the responsibility of the Concessionaire to obtain all required health permits and to provide the City with duplicate permits as well as properly displaying them at the location of operation. Additionally, it is the responsibility of the Concessionaire to maintain a sanitary, healthful and safe operation at all times; and the failure to do so will constitute a material breach of this Agreement. Noncompliance with Carpinteria Municipal Code provisions, Administrative regulations or State and County Health and Safety Codes may result in immediate termination of the contract. In the event of such termination, the Concessionaire will remain liable for any compensation to the City due as set forth in section 2 above.

8. Business License and Conditional Use Permit : It is the responsibility of the Concessionaire to obtain and properly display a City of Carpinteria business license while conducting business within the Carpinteria City limits. It is the Responsibility of the Concessionaire to obtain and remain in compliance with the conditions set forth in the Condition Use Permit issued by the City for this operation.

9. Liability and Worker's Compensation Insurance: The City of Carpinteria requires the Concessionaire to obtain and maintain a one million dollar (\$1,000,000) General Liability Insurance policy with a company approved by, and in a form satisfactory to the City' and provide a certificate of insurance to the City. Additionally, said insurance policy must include the following special endorsements:

a. City of Carpinteria is to be included as an additional insured but only insofar as operations under this contract are concerned.

b. The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to the City.

c. A Products Liability Endorsement

No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Concessionaire to furnish insurance during the term of the proposed contract. Said policy or policies shall be underwritten to the satisfaction of the City.

Furthermore, the City requires the Concessionaire to obtain and maintain a Statutory Workers' Compensation policy covering all Concessionaire's employees while performing any work incidental to the performance of this Agreement.

The Concessionaire shall provide the City with a certificate of insurance documenting the required insurance coverage's prior to any Agreement becoming effective. The policies shall provide that no cancellation, expiration or reduction in coverage shall be effective or occur until at least thirty (30) days after receipt of a notice by the City describing changes in insurance coverage's. Upon request by the City, the Concessionaire shall provide a certified copy of any insurance policy to the City within ten (10) working days.

10. Indemnification: Concessionaire indemnifies, defends and holds the City, and its officers, agents and employees, harmless from and against all claims, damages, losses and expenses, including attorneys' fees and costs, which arise out of, relate to or result from Concessionaire's obligations under, or its performance of services pursuant to this concession contract, whether caused by, or alleged to have been caused by, any act or omission, negligent or otherwise, of Concessionaire or any employee or subcontractor of Concessionaire.

11. Compliance with Laws and Permit Conditions: Concessionaire shall comply with all applicable laws and permit conditions in performing its obligations under this contract.

12. Labor Requirements: Concessionaire agrees to abide by all wage and labor laws of the Federal Government and State of California, and further agrees that no person shall be excluded from employment by the Concessionaire on the grounds of race, creed, color, gender, age, marital status or place of national origin. In this connection the Concessionaire agrees to comply with all City, State and Federal laws relating to equal opportunity rights and shall abide by the City's policies regarding unlawful discrimination, which policies and ordinances are incorporated herein by this reference.

13. Equipment description: Concessionaire, at Concessionaire's own expense, agrees to completely equip the concession and shall keep the same in good appearance and equipped in a safe and healthful manner throughout the term of this

contract. The equipment shall include a produce vending cart or trailer in a safe and sanitary condition. The City reserves the right to inspect and approve or disapprove the Concessionaire's equipment for use in fulfilling the terms of this agreement. The intent of this stipulation is to insure the Concessionaire's equipment is of appropriate dimensions and is in good appearance and that Concessionaire's operation remains within the original scope of a small scale produce concession concept. No signs, names or placards shall be installed or displayed by Concessionaire, except those permanently affixed to the cart and/or approved by the City. A photograph of the produce vending cart showing adequate detail to assess the appearance of the cart must be submitted and approved by the City prior to use by concessionaire.

14. Products for Sale: The City or its agent, reserves the right to review and/or disallow any retail sales item proposed to be sold by the Concessionaire. The intent of this stipulation is to insure that only produce items are sold and that Concessionaire's operation remains within the original scope of a small scale produce concession concept. Additionally the Concessionaire agrees not to store sell food or beverages in polystyrene containers.

15. Records: The Concessionaire agrees to keep and maintain good and sufficient books and records, including all records of financial transactions adequate to permit an audit of the gross sales for the concession described herein. Such books and records shall be available for the inspection of the officers, agents and employees of the City at all reasonable times. Such books and records shall be maintained for a period of two (2) years following the end of the term provided for herein.

The Concessionaire agrees that the City is entitled to conduct such audit of the records of the Concessionaire as the City may deem necessary, through its own employees or using an independent auditor, at the discretion of the City.

16. Termination: The City at its sole discretion shall have the right to terminate this agreement with twenty-four (24) hours written notice upon breach of any provision of this agreement, willful or habitual neglect, or negligence in performance of the agreement, or any activity which has a direct, substantial and adverse effect upon the City. Either party may cancel this Agreement without cause upon thirty (30) days written notice. Compensation to the City, however, will remain at the level agreed to herein (see above Section 3) in the event the Concessionaire cancels this Agreement.

17. Evaluation: The Concessionaire shall furnish the City with reasonable opportunities from time to time to ascertain whether the services of the Concessionaire are being performed in accordance with this Agreement. An evaluation by the City will be conducted on the quality and efficiency of the services provided by the Concessionaire. The Concessionaire shall be evaluated by the City on the following criteria for consideration of any contract extension:

- a. Overall cleanliness of operation

- b. Professionalism and courtesy of all employees
- c. Relationship with participants, organizations and City staff
- d. Other relevant criteria as determined by the City
- e. Quality of product

18. General Provisions:

a. **Notices:** All notices, approvals, acceptances, demands and other communications required or permitted hereunder, to be effective shall be in writing and shall be delivered either in person or by mailing the same by United States mail (postage prepaid, registered or certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

To City: City Manager
 City of Carpinteria
 5775 Carpinteria Ave.
 Carpinteria, CA 93013

With copy to: Peter Brown
 Carpinteria City Attorney
 21 East Carrillo St.
 Santa Barbara, CA 93101

To Concessionaire:

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date and any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its address by giving the other party written notice of its new address as herein provided.

b. **Independent Contractor.** The parties hereto, in the performance of this Agreement, will be acting in an independent contractor relationship and not as agents, employees, partners or joint ventures of one another. It is the express intention of the parties that the Concessionaire is an independent contractor and not the City's employee, that the employees of the Concessionaire and Concessionaire's subcontractors are not the City's employees and that the Concessionaire, its subcontractors and their employees are not entitled to any of the rights, benefits or privileges attributable to City employees. The Concessionaire shall have the control of the means, methods and details of performing the services required under this Agreement and shall only be subject to the

general direction and supervision of the City to ensure the results contracted for are achieved.

c. **Assignment.** This Agreement shall not be assigned by the Concessionaire to any third party without the prior written consent of the City, who shall have the sole discretion to consent or not to consent to any proposed assignment. Any attempted assignment without approval of the City shall be voidable at the option of the City.

d. **Waiver.** No waiver of a provision of this Agreement shall constitute a waiver of any other provision, whether or not similar. No waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

e. **Construction of Terms.** All parts of this Agreement shall in all cases be construed according to their plain meaning and shall not be construed in favor or against either of the parties. The captions and heading of this Agreement are for convenience only and have no force and effect in the interpretation or construction of this Agreement.

f. **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, in whole or in part, the remainder of this Agreement shall remain in full force and effect and shall not be affected, impaired or invalidated thereby. In the event of such invalidity, voidness or unenforceability, the parties hereto agree to enter into supplemental agreements to effectuate the intent of the parties and the purposes of this Agreement.

g. **Controlling Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of Santa Barbara, State of California.

h. **Authorization.** All officers and individuals executing this and other documents on behalf of the respective parties hereby certify and warrant that they have the capacity and have been duly authorized to execute said documents on behalf of the entities indicates.

I. **Entire Agreement.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future rights to claim, contests or assert that this

Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the parties hereto have set forth their signatures as of the date and at the time first written above.

CITY

CONCESSIONAIRE

City of Carpinteria

By _____
Dave Durlinger
City Manager

By _____
Katie Shepherd
Concessionaire

Statement of Workman's Compensation Insurance

_____, 2012

_____ intend to conduct business without any employees. Therefore Workmans Compensation Insurance is not required. If we should decide to hire employees as a part our operations, we will procure workman's compensation insurance prior to using any employees and provide the City with a certificate evidencing said coverage in compliance with the terms of our Concession Agreement with the City.