

Carmichael

RECREATION AND
PARK DISTRICT

Memo

To: Advisory Board of Directors

From: Mike Blondino, District Administrator
Ingrid S. Penney, Administrative Services Manager

Date: February 15, 2024

Subject: First Amendment to Service Agreement between Carmichael Recreation & Park District and Common Kettle LLC for Farmers' Market – Contract 21-05001 Term Renewal

Background/Discussion:

Common Kettle LLC has hosted the Farmers' Market in Carmichael Park offering a variety of produce, food and non-food products since December 2020, first under a short-term agreement followed by a longer-term contract. Following an RFQ process, they were selected from three proposals.

The current term of the agreement ended on December 31, 2023, with one option for an additional two years. In the meantime, they have been in holdover status under the same terms and conditions of the Contract. The Common Kettle LLC is exercising their option to renew their contract for another two years ending December 31, 2025.

Throughout the past three+ years, the Farmers' Market has run smoothly under the management of Common Kettle LLC. CRPD has received numerous positive comments from the Community about the Market.

Common Kettle LLC; CA Corporation, founded in 2010

Terms and Conditions – First Amendment highlights:

- Amended Term of the Agreement: January 1, 2024 to December 31, 2025
- First Amendment Monthly Rent: \$273.19; with 3% Escalator each January
- Added fee for Clubhouse Restroom and Foyer Flooring Cleaning Services:

- Common Kettle LLC will be charged \$50 when the CRPD is required to clean the Clubhouse Restroom(s) and/or the Foyer Flooring. The \$50 covers CRPD direct costs of labor and cleaning supplies.

Budget and Fiscal Impact

The FY2023-24 Budget includes projections of the monthly rental income of \$273.19. First Amendment Rent for 2024 is \$3,278.28. There is a 3% escalator effective in January each year, in accordance with other CRPD contracts. In 2025, the monthly rent will be \$281.39, \$3,376.68.

RECOMMENDATION:

Staff recommends that the Advisory Board of Directors of the Carmichael Recreation and Park District approve the First Amendment to the Contract #21-05001 retroactively to January 1, 2024 with Common Kettle LLC for hosting a Farmers' Market on behalf of the CRPD, as presented; delegate authority to the District Administrator to execute the amendment.

**FIRST AMENDMENT TO SERVICE AGREEMENT
TO HOST A FARMERS' MARKET AT CARMICHAEL PARK
BETWEEN CARMICHAEL RECREATION AND PARK DISTRICT AND
COMMON KETTLE, LLC**

THIS FIRST AMENDMENT TO SERVICE AGREEMENT RE: FARMERS' MARKET (hereinafter "First Amendment") is made and entered into this _____ day of _____, 2024, by and between **CARMICHAEL RECREATION AND PARK DISTRICT**, a Recreation and Park District formed pursuant to the California Public Resources Code (Section 5780, et seq.) (hereinafter DISTRICT) and **COMMON KETTLE LLC**, a California corporation (hereinafter CONTRACTOR) to amend that certain service agreement between the parties dated June 1, 2021 (hereinafter the Agreement).

RECITALS

WHEREAS, the Carmichael Park is owned and operated by DISTRICT;

WHEREAS, CONTRACTOR provides DISTRICT and the community a Farmers' Market, hereinafter referred to as "Event(s)" at Carmichael Park; and;

WHEREAS, CONTRACTOR has exercised its option to extend the term of the Agreement for an extended term of two (2) years pursuant to the terms of the Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED to amend the Agreement between the DISTRICT and CONTRACTOR, as follows:

1. Delete Paragraph 2. Initial Term and replace with:
 - A. First Amendment Term. The term of the Agreement is hereby extended for two (2) years, retroactive to January 1, 2024, and

terminating on December 31, 2025, upon the same terms and conditions contained in the Agreement.

B. Delete Paragraph 3. Rent. A. Base Rent and replace with:

A. First Amendment Rent. Commencing January 1, 2024, Contractor shall pay DISTRICT a Base Rent for the extended term in the amount of \$273.19 per month.

Add D. Clubhouse Restroom and Foyer Flooring Cleaning Services.

Restrooms at the Clubhouse (located at the District Office near Clubhouse) can be available during Event(s) for CONTRACTOR vendors and staff at no additional charge, subject to and provided that the CONTRACTOR cleans all the restrooms and mops the floors of the Clubhouse restrooms and foyer. CONTRACTOR will be charged \$50 per Event(s) when the DISTRICT is required to clean the Clubhouse Restroom(s) and/or foyer flooring. CONTRACTOR to provide proper PPE to use while cleaning and the necessary cleaning supplies for the cleaning solution and mop.

2. REAFFIRMATION. Except as expressly set forth in this First Amendment, all of the terms and conditions contained in the Agreement dated June 1, 2021, shall remain in full force and effect. In the event of a conflict between any term and provision of the Agreement, the terms and provisions of this First Amendment shall control.

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IN WITNESS WHEREOF, the respective parties hereto have executed this First Amendment to the Agreement as of the date first set forth herein and the amendments set forth herein shall be effective as of January 1, 2024.

CARMICHAEL RECREATION AND PARK DISTRICT, a Recreation and Park District formed pursuant to the California Public Resources Code (Section 5780, et seq.)

BY: _____
Mike Blondino, District Administrator

"DISTRICT"

ATTEST:

Clerk of the Advisory Board
Carmichael Recreation and Park
District

CABY:

Margaretha Elisabeth Brunner

"CONTRACTOR"

APPROVED
AS TO
FORM: _____
County Counsel

**AGREEMENT TO HOST A FARMERS' MARKET
AT CARMICHAEL PARK
FOR
CARMICHAEL RECREATION AND PARK DISTRICT**

THIS AGREEMENT is made and entered into as of this 1st day of June 2021, by and between the CARMICHAEL RECREATION AND PARK DISTRICT, a park district existing under authority of Public Resources Code § 5780 et seq., hereinafter referred to as "DISTRICT", and COMMON KETTLE, LLC, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, the DISTRICT is the owner and operator of Carmichael Park; and

WHEREAS, the DISTRICT desires to obtain the services of a contractor to host a Farmers' Market (hereinafter referred to as "Event(s)") at Carmichael Park; and

WHEREAS, CONTRACTOR has the necessary qualifications, experience, and personnel to accomplish the objectives set forth;

WHEREAS, pursuant to Government Code Section 31000, the DISTRICT is authorized to contract for specific special services with persons specially trained, experienced, and competent to perform such services;

WHEREAS, pursuant to Resolution #2017-0010, the Sacramento County Board of Supervisors authorized DISTRICT to execute service agreements; and

WHEREAS, DISTRICT and CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, DISTRICT and CONTRACTOR agree as follows:

I. SCOPE OF SERVICES

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, which is attached hereto and incorporated herein.

II. TERM

A. Initial Term. The term of this Agreement shall be for **31 MONTHS** commencing on **June 1, 2021**, and terminating on **December 31, 2023**, hereinafter referred to as the "Initial Term."

B. Extended Term. DISTRICT AND CONTRACTOR may, by mutual written agreement, extend the initial term for **one additional period of two years** (the "Extended Term") ending **December 31, 2025** upon the same terms and conditions contained in the Agreement, with either party giving the other written notice at least ninety (90) days prior to the Initial Term. If the parties agree to extend the term and execute an amendment to this Agreement. The Administrator is authorized on behalf of LESSOR to execute an amendment to this Agreement.

(1) Extended Term Rent. Extended Term Rent shall be reviewed and negotiated based on CONTRACTOR vendor booths.

III. RENT. Each month of the Agreement term CONTRACTOR shall pay to DISTRICT the total monthly rent set forth below, subject to adjustment as provided herein:

A. Base Rent. Commencing **June 1, 2021** ("Commencement Date"), CONTRACTOR shall pay DISTRICT a Base Rent in the initial amount of **\$250.00** per month for space to host weekly Farmers Market.

B. Adjustment to Base Rent. The Base Rent shall adjust on January 1 of each year following the Commencement Date at the rate of 3% per annum throughout the initial term of the Agreement and any extensions thereto.

C. Payment. Total monthly rent for the Agreement is due and payable in advance on the first calendar day of each month. Any such payment received more than five (5) calendar days past the date such payment is due shall be subject to a ten percent (10%) late charge. All payments shall be made to DISTRICT at 5750 Grant Avenue, Carmichael, CA 95608-3779, Attn. Accounts Receivable

IV. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO DISTRICT

CARMICHAEL RECREATION &
PARK DISTRICT
5750 Grant Avenue
Carmichael, CA 95608
Attn: Mike Blondino

TO CONTRACTOR

COMMON KETTLE, LLC.
6825 Walnut Avenue
Orangevale, CA 95662
Attn: Margaretha Elisabeth Brunner

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

V. COMPLIANCE WITH LAWS

CONTRACTOR agrees to abide by all applicable local, federal, and state accessibility standards and regulations.

CONTRACTOR shall observe and comply with all applicable federal, State, and County laws, regulations, and ordinances related to the use of the facility and public gatherings.

CONTRACTOR further agrees that it is solely responsible for reviewing and ensuring compliance with all applicable public health rules, regulations, orders, and/or guidance in effect at the time of the use of the facility including, but not limited to, physical distancing, face coverings, limits on the size of gatherings, use of appropriate sanitation practices, etc.

DISTRICT reserves the right to immediately revoke CONTRACTOR's right to use of the facility under this agreement should CONTRACTOR fail to comply with any provision of this section.

VI. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

VII. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by DISTRICT. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by DISTRICT.
- B. CONTRACTOR further certifies to DISTRICT that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or County government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

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VIII. PERFORMANCE STANDARDS

CONTRACTOR shall perform its services under this Agreement in accordance with the industry and/or professional standards applicable to CONTRACTOR'S services.

IX. OWNERSHIP OF WORK PRODUCT omitted.

All technical data, evaluations, plans, specifications, reports, documents, or other work products developed by CONTRACTOR hereunder shall be the exclusive property of DISTRICT and shall be delivered to DISTRICT upon completion of the services authorized hereunder. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by DISTRICT. DISTRICT recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR'S services and are not designed for use other than what is intended by this Agreement.

X. STATUS OF CONTRACTOR

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR'S employees) is an independent CONTRACTOR and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S assigned personnel shall not be entitled to any benefits payable to employees of DISTRICT. DISTRICT is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement; and as an independent CONTRACTOR, CONTRACTOR hereby indemnifies and holds DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the DISTRICT shall have no right or authority over such persons or the terms of such employment.

- D. It is further understood and agreed that as an independent CONTRACTOR and not an employee of DISTRICT, neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the DISTRICT to employees of the DISTRICT.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR'S assigned personnel under the terms and conditions of this Agreement.
- F. It is further understood and agreed that if CONTRACTOR'S manager or key personnel cease employment with CONTRACTOR during the term of this Agreement, DISTRICT reserves the right to approve the proposed replacement personnel (via interview and reference checks) and to terminate this Agreement if not satisfied with those personnel.

XI. CONTRACTOR IDENTIFICATION omitted.

XII. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS

- A. CONTRACTOR'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a CONTRACTOR'S employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR'S failure to cure such default within 90 days of notice by DISTRICT shall be grounds for termination of this Agreement.
- C. If CONTRACTOR has a Principal Owner, CONTRACTOR shall provide Principal Owner information to the DISTRICT upon request. Principal Owner is defined for purposes of this Agreement as a person who owns an interest of 25% or more in the CONTRACTOR. Information required may include the Principal Owner's name, address, and social security number. Failure to provide requested information about a Principal Owner within 60 days of request shall be deemed a material breach of this contract and may be grounds for termination.

XIII. BENEFITS WAIVER

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from DISTRICT: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to regular employees pursuant to the County Charter, the Sacramento County Employees' Retirement System (SCERS) and/or any and all memoranda of understanding between DISTRICT and its employee organizations. Should CONTRACTOR or any employee or agent of CONTRACTOR seek to obtain such benefits from DISTRICT, CONTRACTOR agrees to indemnify and hold harmless DISTRICT from any and all claims that may be made against DISTRICT for such benefits.

XIV. RETIREMENT BENEFITS/STATUS

CONTRACTOR acknowledges and agrees that DISTRICT has not made any representations regarding entitlement, eligibility for and/or right to receive ongoing SCERS retirement benefits during the term of this Agreement. By entering into this Agreement, CONTRACTOR assumes sole and exclusive responsibility for any consequences, impacts or action relating to such retirement benefits that is or will be occasioned as a result of the services provided by CONTRACTOR under this Agreement. CONTRACTOR waives any rights to proceed against DISTRICT should SCERS modify or terminate retirement benefits based on CONTRACTOR'S provision of services under this Agreement.

XV. CONFLICT OF INTEREST

CONTRACTOR and CONTRACTOR'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

XVI. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to DISTRICT, CONTRACTOR shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

XVII. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. CONTRACTOR agrees and assures DISTRICT that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local Anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of DISTRICT, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of DISTRICT employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records, and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.
- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.

XVIII. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless DISTRICT and the County of Sacramento, their respective governing boards, officers, directors, officials, employees, and authorized volunteers and agents, (collectively "Indemnified Parties") from and against any and all claims, demands, actions, losses, liabilities, damages, and all expenses and costs incidental thereto (collectively "Claims") including cost of defense, settlement, arbitration, and reasonable attorneys' fees, resulting from injuries to or death of persons, including but not limited to employees of either Party hereto, and damage to or destruction of property or loss of use thereof, including but not limited to the property of either Party hereto, arising out of, pertaining to, or resulting from the acts or omissions of the Contractor, its officers, employees, or agents, or the acts or omissions of anyone else directly or indirectly acting on behalf of the CONTRACTOR, or for which the CONTRACTOR is legally liable under law regardless of whether caused in part by an Indemnified Party. CONTRACTOR shall not be liable for any Claims arising from the sole negligence or willful misconduct of an Indemnified Party where such indemnification would be invalid under Section 2782 of the Civil Code.

To the extent permitted by law, this indemnity obligation shall not be limited by the types and amounts of insurance or self-insurance maintained by CONTRACTOR or CONTRACTOR'S subcontractors at any tier.

Nothing in this Indemnity shall be construed to create any duty to, any standard of care with reference to, or any liability or obligation, contractual or otherwise, to any third party.

The provisions of this Indemnity shall survive the expiration or termination of the Agreement.

XIX. INSURANCE

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance as specified in Exhibit B. It is the responsibility of CONTRACTOR to notify its insurance advisor or insurance carrier(s) regarding coverage, limits, forms, and other insurance requirements specified in Exhibit B. It is understood and agreed that DISTRICT shall not pay any sum to CONTRACTOR under this Agreement unless and until DISTRICT is satisfied that all insurance required by this Agreement is in force at the time services hereunder are rendered. Failure to maintain insurance as required in this Agreement may be grounds for material breach of contract.

XX. INFORMATION TECHNOLOGY ASSURANCES

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by DISTRICT, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to DISTRICT under this Agreement.

XXI. COMPENSATION AND PAYMENT FOR SERVICE LIMITATIONS omitted.

XXII. RESERVED

XXIII. SUBCONTRACTS, ASSIGNMENT

- A. CONTRACTOR shall obtain prior written approval from DISTRICT before subcontracting any of the services delivered under this Agreement. CONTRACTOR remains legally responsible for the performance of all contract terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of this Agreement. CONTRACTOR shall be held responsible by DISTRICT for the performance of any subcontractor whether approved by DISTRICT or not.

- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of DISTRICT.

XXIV. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon DISTRICT unless agreed in writing by Administrator and counsel for DISTRICT.

XXV. SUCCESSORS

This Agreement shall bind the successors of DISTRICT and CONTRACTOR in the same manner as if they were expressly named.

XXVI. TIME

Time is of the essence of this Agreement.

XXVII. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

XXVIII. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONTRACTOR shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. DISTRICT shall not be required to make payments for any services that are the subject of this dispute resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1,

Division 3.6, of the California Government Code or as otherwise set forth in local, State and federal law.

XXIX. TERMINATION

- A. DISTRICT may terminate this Agreement without cause upon thirty (30) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by DISTRICT to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. DISTRICT may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, DISTRICT may proceed with the work in any manner deemed proper by DISTRICT. If notice of termination for cause is given by DISTRICT to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. **Omitted.**
- D. **Omitted.**
- E. **Omitted.**

XXX. REPORTS

CONTRACTOR shall, without additional compensation therefor, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by ADMINISTRATOR concerning CONTRACTOR'S activities as they affect the contract duties and purposes herein. DISTRICT shall explain procedures for reporting the required information.

XXXI. AUDITS AND RECORDS

Upon DISTRICT'S request, DISTRICT or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR'S premises, CONTRACTOR'S financial and program records as DISTRICT deems necessary to determined CONTRACTOR'S compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR. CONTRACTOR shall maintain such records for a period of four years following termination of the Agreement, and shall make them available for copying upon DISTRICT'S request at DISTRICT'S expense. DISTRICT shall have the right to

withhold any payment under this Agreement until CONTRACTOR has provided access to CONTRACTOR'S financial and program records related to this Agreement.

XXXII. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between DISTRICT and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between DISTRICT and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

XXXIII. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

XXXIV. FORCE MAJEURE

Neither CONTRACTOR nor DISTRICT shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

XXXV. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

XXXVI. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

XXXVII. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**Carmichael Recreation & Park
District, a park district existing under
authority of Public Resources Code §
5780 et seq.**

COMMON KETTLE, LLC.

By: _____
Mike Blondino, District Administrator

By: _____
Margaretha Elisabeth Brunner

Date: _____

Date: _____

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**EXHIBIT A to Agreement
between the CARMICHAEL RECREATION AND PARK DISTRICT,
hereinafter referred to as "DISTRICT",
and COMMON KETTLE, LLC
hereinafter referred to as "CONTRACTOR"**

SCOPE OF SERVICES

I. SERVICE LOCATION

Facility Name(s):	Carmichael Park
Street Address:	5750 Grant Avenue
City and Zip Code:	Carmichael, CA 95608

II. SCOPE

- A. CONTRACTOR agrees to host a weekly Event(s) on Sundays from 9:00 a.m. to 2:00 p.m. on behalf of the DISTRICT. Admission will be free to the public.
- B. The DISTRICT'S Administrator, or designee, may negotiate with CONTRACTOR and approve reasonable modifications in tasks, schedules, services, and staff assignments so long as such modifications are within the general scope of services provided under this Agreement, and are determined to be in the best interest of DISTRICT.
- C. The CONTRACTOR is granted a revocable license by the DISTRICT to use the property as specified herein. This license does not create a property interest in CONTRACTOR and may be revoked at any time by DISTRICT with or without prior notice.
- D. The Event(s) shall encourage strong community engagement and involvement, promote community-building and health outcomes, celebrate the diversity of the DISTRICT, and provide a fun and festive atmosphere that supports local agriculture.
- E. The Event(s) shall include a balanced blend of vendor exhibits and activities as follows:
 - o **No less than 75% Farmers & Food Products**
This category encompasses fresh fruits, vegetables, herbs or flowers, bakery products, nut and fruit package products, eggs, cheese, oils, prepared foods, and beverages meeting Sacramento County Environmental Health Standards.

- **Up to 25% Non-Food Products**
This category encompasses imitation flowers and floral, cookware, soaps, and other products.
 - Local businesses and organizations, artisans, and musicians should be given an opportunity to participate.
- F. Cancellation of an Event is pursuant to the following conditions:
- Inclement weather with sustained wind speeds exceeding 20 mph
 - Air Quality Index, Ozone and Particle Pollution value of 201 and above, denoting very unhealthy for everyone. See AQI Basics
<https://www.airnow.gov/aqi/aqi-basics/>

Notification of the Event must be communicated to the DISTRICT and all vendor participants by phone message, text and/or email a minimum of three hours prior to Event start time. A cancellation notice will also be posted on the CONTRACTOR's web site, emailed to subscribers, and included in CONTRACTOR's social media platforms.

III. RESPONSIBILITIES OF DISTRICT AND CONTRACTOR FOR SCOPE

- A. CONTRACTOR shall provide copies to the DISTRICT, or its authorized representatives, of all permits required to operate the Event(s) in accordance with local, county and/or state health and safety regulations.
- B. CONTRACTOR shall provide a detailed Market Work Plan that includes:
- A copy of the operational guidelines/rules for the Event(s).
 - A safety plan for all involved with the Event(s) when dealing with COVID-19 or similar issues.
 - Vendor locations and an anticipated Event circulation pattern. See Attachment A, Site Map.
 - A plan for additional restroom facilities during Special Event(s). The DISTRICT provides portable restrooms throughout the park for public and vendor use as well as one permanent restroom located near the playground. Any additional restroom facilities must be provided by the CONTRACTOR. Restrooms at the Clubhouse (located in the District Offices) can be available during Event(s) for CONTRACTOR vendors and staff only at no additional charge, subject to and provided that the CONTRACTOR cleans all the restrooms and mops the floors of the Clubhouse restrooms and foyer. CONTRACTOR to provide proper PPE to use while cleaning and the necessary cleaning supplies except for the cleaning solution and mop.
 - Trash and recycling plan. Trash disposal and clean-up must be provided by the CONTRACTOR.

- Staffing that includes a Manager onsite two (2) hours in advance of each Event start time until the last vendor leaves.
 - Temporary Event(s) signage installed and removed each week at locations mutually agreed to by DISTRICT and CONTRACTOR. The CONTRACTOR will be responsible for providing their own signage.
- C. CONTRACTOR is permitted to seek and receive sponsorships for Farmers' Market enhancements with the following stipulations:
- Sponsors must be approved by the DISTRICT.
 - No inappropriate language or message may be displayed on any sponsorship material.
 - The message and graphics on any sponsored material must be done professionally and be maintained in a neat and clean manner.
 - Sponsorship material may be on display at Carmichael Park only during the CONTRACTOR's permitted use. All material must be removed by CONTRACTOR by the end of the CONTRACTOR's permitted use.
 - The DISTRICT reserves the right to decline sponsorships and remove sponsorship material at any time for reasoning including but limited to content, language, location, time limitations, or appearance.
 - The CONTRACTOR is responsible for any cost associated with repair or replacement of sponsorship material the DISTRICT removed due to content, language, location, time limitations, or appearance.
- D. DISTRICT shall provide the following in support of the Event(s):
- Approved use of the Property each Sunday from 7:00 a.m. until 4:00 p.m.
 - Space to accommodate ADA accessible restroom facilities and reasonable accommodation for weekly service of restroom facilities. Provide access to the Clubhouse restrooms for use by the CONTRACTOR vendors and staff at no additional charge; provide cleaning solution approved by the EPA to be effective against COVID-19, provide a mop, and re-stock paper supplies on Monday.
 - Accessible parking for vendors/farmers and patrons on market days a minimum of two hours before the market opens
 - Park patrol, park maintenance, and waste services in support of the Event(s) as needed and mutually agreed to by both parties
 - Promotion of Event(s) in DISTRICT media which may include the DISTRICT newsletter, website, social media, and community calendar. Content shall be subject to approval by the DISTRICT in its sole discretion.
- E. Clubhouse restroom conditions of use for CONTRACTOR vendors and staff subject to review and negotiation once Clubhouse rentals return.

IV. AUTHORITY OF CONTRACTOR PERFORMING SCOPE OF WORK

CONTRACTOR is retained to provide and perform the scope of services covered by this Agreement. CONTRACTOR, including CONTRACTOR'S assigned personnel, shall have no authority to represent DISTRICT or DISTRICT staff at any meetings of public or private agencies unless an appropriate DISTRICT official provides prior written authorization for such representation which outlines the purpose, scope and duration of such representation. CONTRACTOR shall possess no authority or right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligations whatsoever. DISTRICT is responsible for making all policy and governmental decisions related to the work covered by this Agreement.

V. PUBLICATION OF DOCUMENTS AND DATA

CONTRACTOR shall provide marketing collateral materials promoting Event(s). DISTRICT names and/or logo must be included in a prominent position on all marketing materials developed to promote the Event(s). If any additional benefits are given to market sponsors, the DISTRICT's support is also to be treated as a sponsor in terms of recognition and benefits.

VI. PERSONNEL

In the performance of the services hereunder, CONTRACTOR shall provide the organization, staffing and management of weekly Event(s). CONTRACTOR shall provide a list of subcontractors and/or partners, if any, and their specific roles for the Event(s). Key contacts for this project shall be as follows:

DISTRICT: NAME: Mike Blondino
 PHONE: 916-485-5322
 FAX: 916-485-0805
 E-MAIL: mblondino@carmichaelpark.com

DISTRICT: NAME: Alaina Lofthus
 PHONE: 916-483-7826
 FAX: 916-483-7861
 E-MAIL: alaina@carmichaelpark.com

CONTRACTOR: NAME: Margaretha Elisabeth Brunner
PHONE: (916) 215-7713
FAX:
E-MAIL: commonkettle@gmail.com

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**EXHIBIT B to Agreement
between the CARMICHAEL RECREATION AND PARK DISTRICT,
hereinafter referred to as "DISTRICT",
and COMMON KETTLE, LLC.
hereinafter referred to as "CONTRACTOR"**

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the CONTRACTOR, its agents, representatives or employees. DISTRICT shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If in the opinion of the DISTRICT Risk Manager, insurance provisions in these requirements do not provide adequate protection for DISTRICT and for members of the public, DISTRICT may require CONTRACTOR to obtain insurance sufficient in coverage, form and amount to provide adequate protection. DISTRICT'S requirements shall be reasonable but shall be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

I. VERIFICATION OF COVERAGE

CONTRACTOR shall furnish the DISTRICT with certificates evidencing coverage required below. **Copies of required endorsements must be attached to provided certificates.** The DISTRICT Risk Manager may approve self-insurance programs in lieu of required policies of insurance if, in the opinion of the Risk Manager, the interests of the DISTRICT and the general public are adequately protected. All certificates, evidence of self-insurance, and additional insured endorsements are to be received and approved by the DISTRICT before performance commences. The DISTRICT reserves the right to review complete copies of any policy of insurance offered in compliance with these specifications.

II. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

- A. GENERAL LIABILITY: Insurance Services Office's Commercial General Liability occurrence coverage form CG 0001. Including, but not limited to Premises/Operations, Products/Completed Operations, Contractual, and Personal & Advertising Injury, without additional exclusions or limitations, unless approved by the DISTRICT Risk Manager.
- B. AUTOMOBILE LIABILITY: Insurance Services Office's Commercial Automobile Liability coverage form CA 0001.

1. Commercial Automobile Liability: auto coverage symbol "1" (any auto) for corporate/business owned vehicles. If there are no owned or leased vehicles, symbols 8 and 9 for non-owned and hired autos shall apply.
 2. Personal Lines automobile insurance shall apply if vehicles are individually owned.
- C. WORKERS' COMPENSATION: Statutory requirements of the State of California and Employer's Liability Insurance.
- D. Omitted.
- E. UMBRELLA or Excess Liability policies are acceptable where the need for higher liability limits is noted in the Minimum Limits of Insurance and shall provide liability coverages that at least follow form over the underlying insurance requirements where necessary for Commercial General Liability, Commercial Automobile Liability, Employers' Liability, and any other liability coverage (other than Professional Liability) designated under the Minimum Scope of Insurance.

III. MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall maintain limits no less than:

- A. General Liability shall be on an Occurrence basis (as opposed to Claims Made basis). Minimum limits and structure shall be:

General Aggregate:	\$2,000,000
Products Comp/Op Aggregate:	\$2,000,000
Personal & Adv. Injury:	\$2,000,000
Each Occurrence:	\$2,000,000

- B. AUTOMOBILE LIABILITY:
1. Commercial Automobile Liability for Corporate/business owned vehicles including non-owned and hired, \$1,000,000 Combined Single Limit.
 2. Personal Lines Automobile Liability for Individually owned vehicles, \$250,000 per person, \$500,000 each accident, \$100,000 property damage.
- C. WORKERS' COMPENSATION: Statutory.
- D. EMPLOYER'S LIABILITY: \$1,000,000 per accident for bodily injury or disease.
- E. Omitted.

IV. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retention that apply to any insurance required by this Agreement must be declared and approved by the DISTRICT.

V. Omitted.

VI. OTHER INSURANCE PROVISIONS

The insurance policies required in this Agreement are to contain, or be endorsed to contain, as applicable, the following provision:

A. All Policies:

1. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII. The DISTRICT Risk Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the DISTRICT and the general public are adequately protected.
2. MAINTENANCE OF INSURANCE COVERAGE: The CONTRACTOR shall maintain all insurance coverages and limits in place at all times and provide the DISTRICT with evidence of each policy's renewal within ten (10) after its anniversary date.

CONTRACTOR is required by this Agreement to immediately notify DISTRICT if they receive a communication from their insurance carrier or agent that any required insurance is to be canceled, non-renewed, reduced in scope or limits or otherwise materially changed. CONTRACTOR shall provide evidence that such cancelled or non-renewed or otherwise materially changed insurance has been replaced or its cancellation notice withdrawn without any interruption in coverage, scope, or limits. Failure to maintain required insurance in force shall be considered a material breach of the Agreement.

VII. COMMERCIAL GENERAL LIABILITY AND/OR COMMERCIAL AUTOMOBILE LIABILITY

A. ADDITIONAL INSURED STATUS: The DISTRICT and the County of Sacramento and their governing Boards, officers, directors, officials, employees, and volunteers and agents (each an "Additional Insured Party," and collectively "Additional Insured Parties"), are to be included as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR; or automobiles

owned, leased, hired or borrowed by the CONTRACTOR. The coverage shall contain no endorsed limitations on the scope of protection afforded to the Additional Insured Parties.

- B. PRIMARY INSURANCE: For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be endorsed to be primary insurance as respects any insurance or self-insurance maintained by the Additional Insured Parties. Any insurance or self-insurance maintained by the Additional Insured Parties shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
- C. SEVERABILITY OF INTEREST: The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. SUBCONTRACTORS: CONTRACTOR shall be responsible for the acts and omissions of all its subcontractors and additional insured endorsements as provided by CONTRACTOR'S subcontractor.

VIII. WORKERS' COMPENSATION

Workers' Compensation Waiver of Subrogation: The workers' compensation policy required hereunder shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the Additional Insured Parties which might arise by reason of payment under such policy in connection with performance under this Agreement by the CONTRACTOR. Should CONTRACTOR be self-insured for workers' compensation, CONTRACTOR hereby agrees to waive its right of subrogation against the Additional Insured Parties.

IX. Omitted.

X. NOTIFICATION OF CLAIM

If any claim for damages is filed with CONTRACTOR or if any lawsuit is instituted against CONTRACTOR, that arise out of or are in any way connected with CONTRACTOR'S performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affect or might reasonably affect DISTRICT, CONTRACTOR shall give prompt and timely notice thereof to DISTRICT. Notice shall be prompt and timely if given within thirty (30) days following the date of receipt of a claim or ten (10) days following the date of service of process of a lawsuit.

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**EXHIBIT C to Agreement
between the CARMICHAEL RECREATION AND PARK DISTRICT,
hereinafter referred to as "DISTRICT",
and COMMON KETTLE, LLC.
hereinafter referred to as "CONTRACTOR"**

BUDGET REQUIREMENTS

I. RENTAL FEE SCHEDULE PAYMENT TO DISTRICT

The total minimum monthly rental fee payment amount under this Agreement is: \$250.00, payable in advance on the first calendar day of each month. Any such payment received more than five (5) calendar days past the date such payment is due shall be subject to a ten percent (10%) late charge.

The total minimum monthly rental fee is subject change at a rate of 3% per annum on January 1 throughout the initial term of the lease and any extensions thereto.

II. CONTRACTOR REQUIREMENTS

- A. CONTRACTOR shall provide rate sheet listing fees charged by the CONTRACTOR to vendors to participate in the Event(s).
- B. CONTRACTOR shall provide a minimum of two (2) spaces each week for the DISTRICT and/or non-profit group(s) selected by the DISTRICT to distribute information and/or take registration for their programs at no cost. Any equipment or materials for these spaces must be provided by the DISTRICT or the participating non-profit group(s).
- C. CONTRACTOR shall extend a discount farmers and food product vendors operating within the Carmichael limits.
- D. CONTRACTOR may plan to participate and accept:
 - WIC Farmers Market and Senior Market Nutrition Programs
 - WIC Fruit & Vegetable Check Program
 - California Advantage, Electronic Benefits Transfer (EBT) cards for local residents to enable use of food stamp benefits to purchase produce at the Event(s).
- E. CONTRACTOR shall maintain for four (4) years following termination of this Agreement full and complete documentation of all services, income, and expenditures associated with performing the services covered under this Agreement. Revenue documentation shall include: prenumbered receipts for

funds received. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

III. WORK NOT IN SCOPE OF SERVICES

CONTRACTOR shall immediately notify the DISTRICT'S Administrator in writing of any work that the DISTRICT requests to be performed that CONTRACTOR believes is outside of the original scope of work covered by this Agreement. If it is determined that said request is outside of the scope of work, such work shall not be performed unless and until the Administrator approves such request in writing and authorizes an amendment approved and executed by both parties.

IV. PAYMENTS

DISTRICT shall address and submit all invoices associated with this Agreement by U.S. mail, email, or personal delivery to the CONTRACTOR.

The CONTRACTOR shall send payment to following address:

Carmichael Recreation and Park District
5750 Grant Avenue
Carmichael, CA 95608
Attn: Accounts Receivable

DISTRICT may change the address to which subsequent payment shall be sent by giving written notice designating a change of address to CONTRACTOR, which shall be effective upon receipt.