

**MEMORANDUM OF UNDERSTANDING
BETWEEN
HARVEST TIME IN BRENTWOOD
AND THE CITY OF BRENTWOOD**

This Memorandum of Understanding ("MOU") is entered this ____ day of _____ 2024, and effective on _____, 2024 ("Effective Date"), by and between the City of Brentwood, a municipal corporation of the State of California ("City"), and Harvest Time in Brentwood ("Harvest Time"), a 501(c)(3) non-profit corporation in the State of California (each a Party, and collectively, the "Parties") for delivery and administration of the U-Pick Capital Program, including but not limited to agricultural tourism ("Agri-Tourism"), brand promotion, and social media marketing.

RECITALS

A. The City of Brentwood is committed to establishing new ways to support and preserve its rich farming heritage by initiating measures to protect sensitive farmlands, educating and increasing awareness about the high quality produce grown in and around the City, and entering into agreements with non-profit organizations and other local businesses that foster business growth in the City's agricultural sector.

B. On June 27, 2023, the City Council for the City of Brentwood adopted Resolution No. 2023-86, directing City staff to prepare a Memorandum of Understanding with Harvest Time for a three year staffing and marketing program funded by Agricultural Mitigation Fees in furtherance of the City's Agricultural Preservation Program and Agricultural Enterprise Program, which was established in 2001 and updated in 2010.

C. Harvest Time, a non-profit 501(c)(3) organization, whose membership is comprised of many local farmers and stakeholders, is committed to advancing public knowledge about agriculture and its various products, with a special focus on enhancing Agri-tourism in East Contra Costa County. The organization's mission is to educate the general public about farming, specifically in the Brentwood region. It invites all farms and ranches in Contra Costa County to become members.

D. Leveraging diverse initiatives like the Annual Trail Map, digital platforms, and social media marketing, Harvest Time successfully attracts an estimated 500,000 visitors annually to the Brentwood region. Presently, Harvest Time has about 60 active members who collectively manage over 900 acres of agricultural land, offering a wide range of agricultural products, including fruits, vegetables, nuts, wines, nursery stock, alfalfa, gourmet items, and gift baskets.

E. A significant portion of the Harvest Time membership consists of active "U-Pick Farms." During the peak harvesting season, these farms offer unique, hands-on experiences, allowing the public to harvest fresh produce directly from the source.

F. In June 2023, Harvest Time announced the Brentwood region as the official "U-Pick Capital of the World." The region is not only home to the oldest U-Pick farm west of the Mississippi River, but also holds the highest concentration of U-Pick farms within a defined geographical area.

G. Harvest Time's mission and the initiatives undertaken are consistent with the City's Agricultural Enterprise Program.

H. The Parties seek to promote the Brentwood region's status as the U-Pick Capital of the World. This commitment includes, but is not limited to, the development and execution of effective marketing strategies and campaigns the initiative.

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Purpose. City shall provide funding from Agricultural Mitigation fee funds to assist in financing programs associated with Brentwood's Agricultural Preservation and Enterprise Program for lands located within or adjacent to Brentwood or its approved sphere of influence pursuant to City Ordinance No. 877 (as codified in Section 17.730 of the City's Municipal Code).

2. Responsibilities of Harvest Time. Along with the terms and conditions of this MOU, Harvest Time agrees to be responsible for and complete those items set forth in the **Exhibit "A"**, attached hereto and by this reference incorporated herein. Harvest Time and its representatives will diligently perform all activities as described in Exhibit "A" and implement the programs in accordance with applicable provisions of law.

3. Responsibilities of the City. Along with the terms and conditions of this MOU, the City agrees to be responsible for and complete those items set forth in the **Exhibit "B"**, attached hereto and by this reference incorporated herein.

4. Relationship of the Parties. Harvest Time is free from the control and direction of the City, in pursuit of the Harvest Time's independent calling, and not as an employee of the City. It is understood that this is a MOU by and between two parties and is not intended to, and will not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractors. Any persons used or hired by the Harvest Time to provide services under this MOU shall not be considered employees or agents of City for any purposes whatsoever. Any terms in this MOU referring to direction or instruction from the City shall be construed as providing for direction as to policy and the result of Harvest Time's services only, and not as to the means by which such a result is obtained.

5. Term. This MOU will commence on the Effective Date and, unless terminated earlier pursuant to this MOU, will terminate June 30, 2027.

6. Grant Payment. For the term of this MOU, the City Council will provide the grant payments as more particularly outlined in **Exhibits "A" and "B"** in an amount not to exceed Two Hundred Forty-Four Thousand, Two Hundred Dollars (\$244,200.00). Harvest Time will invoice City on a quarterly basis for actual cost incurred by Harvest Time and pursuant to the terms described in **Exhibit "B"**.

6.1 Harvest Time will be reimbursed for actual costs incurred in completing the programs, activities, and services identified in this MOU and as provided for in **Exhibits "A" or "B"**. Any additional programs, activities and services provided not identified in this MOU will be at the sole costs of Harvest Time and not be reimbursable by the City.

6.2 Grant funds provided by the City under this MOU shall only be used for the purposes for which the funds were granted and shall be consistent with the authorized uses for the source of funding by the City and for no other purpose. No grant fund shall be used for political campaigning purposes or activities.

6.3 With respect to the funds disbursed by City under this MOU, Harvest Time agrees that if Harvest Time claims or receives payment from City for an expense that was deemed eligible and that payment or reimbursement is later disallowed by a local, state or federal government or by order, Harvest Time shall promptly refund the disallowed amount to the City upon City's request.

7. Indemnity. Harvest Time shall hold harmless, defend and indemnify City, its officers, agents, volunteers and employees from and against any and all claims, demands, costs or liability including attorney fees arising out of or in any way connected with the performance of this MOU, caused in whole or in part by any act or omission by Harvest Time, any of its officers, employees, agents, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent caused by the active negligence, sole negligence, or willful misconduct of City.

8. Insurance. Harvest Time shall obtain and maintain, at its cost and expense, for the duration of the MOU and any amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the Services by Harvest Time or Harvest

Time's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:VII."

8.1 Coverages and Limits. Harvest Time will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney, approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Harvest Time's indemnification obligations under this MOU. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Harvest Time pursuant to this MOU are adequate to protect Harvest Time. The coverage will contain no special limitations on the scope of its protection to the above-designated insureds except for Workers Compensation and errors and omissions insurance. Harvest Time will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage. If Harvest Time believes that any required insurance coverage is inadequate, Harvest Time will obtain such additional insurance coverage, as Harvest Time deems adequate, at Harvest Time's sole expense.

8.1.1 Commercial General Liability Insurance. \$2,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this MOU or the general aggregate will be twice the required per occurrence limit.

8.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

8.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Harvest Time has no employees and provides, to City's satisfaction, a declaration stating this is the case.

8.1.4 Professional Liability. Errors and omissions liability appropriate to Harvest Time's profession with limits of not less than \$1,000,000 per claim.

8.2 Endorsements. For Commercial General Liability Insurance, Harvest Time will ensure that the policies are endorsed to name the City, its officers, agents, volunteers and employees as additional insureds. Prior to City's execution of this MOU, Harvest Time will furnish, to the satisfaction of the City, certificates of insurance and endorsements.

8.3 Cancellation. Insurance will be in force during the life of the MOU and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the notice provisions of this MOU.

8.4 Failure to Maintain Coverage. If Harvest Time fails to maintain any of these insurance coverages, then City will have the option to declare Harvest Time in breach of this MOU, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Harvest Time is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Harvest Time or deduct the amount paid from any sums due Harvest Time under this MOU.

8.5 Submission of Insurance Policies. City reserves the right to require, at any time, complete and certified copies of any or all required insurance policies and endorsements.

8.6 Primary Coverage. For any claims related to the Services and this MOU, the Harvest Time's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Harvest Time's insurance and not contributory with it.

8.7 Reduction in Coverage/Material Changes. Harvest Time will notify City in writing pursuant to the notice provisions of this MOU thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this MOU or any material changes to the respective insurance policies.

8.8 Waiver of Subrogation. The policies will contain a waiver of subrogation for the benefit of City.

8.9 This Section 8 will survive the expiration of this MOU

9. Non-discrimination. The Parties will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment. During the performance of this MOU, Harvest Time shall not unlawfully discriminate, harass or allow harassment against any employee, City employee, applicant for employment with Harvest Time, or against any person seeking accommodations, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, because of sex (gender), race, color, creed, religion, national origin, ancestry, age, sexual orientation, gender identity, domestic partner status, marital status, medical condition, physical or mental disability. Harvest Time acknowledges that, pursuant to the American Disabilities Act (ADA) of 1990, (42 U.S.C. §12101 et seq.) programs, services and other activities provided by a public entity to the public, whether directly or indirectly, must be accessible to the disabled public. Harvest Time shall not discriminate against any person protected under the ADA and shall comply at all times with the provisions of the ADA. Harvest Time shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this MOU.

10. Labor Code Compliance. To the extent that any work performed by or for Harvest Time pursuant to this MOU requires the payment and reporting of payment of prevailing wages pursuant to state law, such obligation is the responsibility of Harvest Time. Harvest Time agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this MOU to assure that the prevailing wage provisions of the Labor Code are being met. Current California Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. Please refer to the DIR's Public Works Manual for more information at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>. Harvest Time affirms that it is aware of the provisions of section 3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance, and Harvest Time affirms that it will comply with such provisions before commencing the performance of the work under this MOU and will make its contractors and subcontractors aware of this provision.

11. Harvest Time to Pay All Taxes. Harvest Time shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this MOU or any of the activities contemplated by this MOU.

12. Use of City Real Property. If at any time this MOU entitles Harvest Time to the possession, occupancy or use of City real property for private gain, then Harvest Time, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this MOU may create a possessory interest subject to property taxation and Harvest Time, and any subcontractor, successor or assign, may be subject to the payment of such taxes. Harvest Time shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

13. Entire Agreement. This MOU and its Exhibits "A" and "B" contain the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this MOU. In case of a conflict between the terms of this MOU and any Exhibit attached, the terms of this MOU will prevail. No testimony or evidence of any such representations, understandings, or covenants will be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this MOU.

14. Amendments. Changes to the terms and conditions of this MOU will be made only by

written amendment signed by the Parties.

15. Notices. All notices with respect to this MOU will be given in writing by first class mail to the Parties, or to such other persons' addresses or telephone numbers as the Parties may designate in writing from time to time as follows:

City: City of Brentwood
Attention: Abraham Salinas, Senior Analyst
City Manager – Economic Development
150 City Park Way
Brentwood, CA 94513

Harvest Time: Harvest Time
Attention: Jessica Enos, President
P.O. Box 810
Brentwood, CA 94513

Notice will be deemed effective on the date personally delivered or, if mailed, 3 days after depositing it in the United States Mail. Harvest Time must notify City within 14 days of any change to its mailing address.

13. Termination. Either Party may terminate this MOU at any time after a discussion and delivery of written notice to the other Party, with such termination effective immediately. In the event of termination of this MOU, any unexpended funds will be returned to the Party that has contributed them. Harvest Time shall relinquish all materials and files related to this MOU to the City upon termination.

14. Assignment. Neither Party will assign any right or obligation pursuant to this MOU without the written consent of the other Party. Any attempted or purported assignment without the written consent of the other Party will be void and of no effect.

15. Third Parties. This MOU does not confer any benefits to any third party.

16. Governing Law and Venue. The formation, interpretation and performance of this MOU shall be governed by the laws of the State of California, without regard to conflict of laws principles. Any action at law or in equity brought under this MOU for the purpose of enforcing a right or rights provided for by this MOU will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

17. Paragraph Headings. Paragraph headings are used for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning of the paragraphs.

18. No Waiver. Waiver by either Party of any default, breach or condition precedent of this MOU will not be construed as a waiver of any other default, breach or condition precedent or of any other right under this MOU.

19. Severability. If any term, provision, covenant, or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.

20. Maintenance of Records. Harvest Time will maintain complete and accurate records with respect to costs incurred under this MOU. All records will be clearly identifiable. Harvest Time will allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this MOU. Harvest Time will allow inspection of all work, data, documents, proceedings, and activities related to the MOU for a period of forty-two (42) months from the date of final payment under this MOU.

21. Signatures.

21.1 Counterparts. This MOU may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

21.2 Digital/Electronic Signatures. Using a City-approved method, this MOU may be executed through the use of digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this MOU will be construed as the Parties' consent to do business electronically.

22. Authority. The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of the Parties.

Harvest Time:

City of Brentwood:

By: _____
Jessica Enos,
President

By: _____
Tim Y. Ogden, City Manager

ATTEST:

By: _____
Patrick Johnston,
Vice President

By: _____
Margaret Wimberly, City Clerk

APPROVED AS TO FORM:

By: _____
Katherine Wisinski, Interim City
Attorney

Exhibit A
Harvest Time Responsibilities

1. Administration of Harvest Time:

A. Harvest Time is a non-profit corporation, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Harvest Time has established and maintains valid non-profit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. Harvest Time has duly authorized by all necessary action the execution, delivery and performance of this MOU. Harvest Time has duly executed and delivered this MOU and this MOU constitutes a legal, valid and binding obligation of Harvest Time, enforceable against Harvest Time in accordance with the terms hereof. Harvest Time, its Board of Directors ("Board") and its appointed representatives are solely responsible for administrative operations of its organization.

B. Harvest Time shall implement and administer the U-Pick Capital Program.

C. Harvest Time will recruit, hire and retain its own personnel. The activities and services shall be performed and implemented by qualified personnel under the direction and supervision of Harvest Time.

2. Administration of U-Pick Capital Program:

A. In exchange for City financial assistance, Harvest Time will hire a person to serve as Program Manager for the U-Pick Capital Program. The Program Manager reports directly to Harvest Time Board of Directors, and is responsible for the implementation of the U-Pick Capital Program.

B. The program manager hired personnel will perform the following on behalf of Harvest Time:

- i. Develop and maintain effective relationships with Harvest Time members, community groups, public officials, City staff and the public.
- ii. Develop and execute marketing plans and campaign to promote the U-Pick Capital Program.
- iii. Work with the Board to identify and target specific audiences through market research and analysis.
- iv. Develop and manage content strategy that aligns with the Board goals and objectives.
- v. Work with current outside contractors to develop and maintain social media efforts including media announcement, marketing initiatives, creating engaging content, and monitoring engagement metrics.
- vi. Collaborate with designers, photographers, and other creative professionals to produce high-quality marketing materials such as maps, brochures, flyers, and videos.

- vii. Attend monthly Harvest Time meetings and report directly to the Board of Directors.
- viii. Meet quarterly, at minimum, with City representatives.
- ix. Provide the City and Harvest Time with a written quarterly update and comprehensive annual report.
- x. Report to the City of Brentwood City Council and City staff, as requested.
- xi. Prepare, negotiate, review and administer contracts and grants for program operations; ensure that grant and budgetary guidelines are followed; coordinate with grant agencies to provide compliance reporting.
- xii. Contribute to the overall effectiveness of Harvest Time by developing and coordinating work teams/committees, and by reviewing, recommending and implementing improved policies and procedures.
- xiii. Analyze market trends, activities, and consumer behaviors to identify opportunities to promote agriculture in the Brentwood region.
- xiv. Conduct customer research and analyze customer feedback improve the Brentwood region's reputation of being the U-Pick Capital.
- xv. Maintain a U-Pick Capital database.
- xvi. Create revenue generation through event sales, sponsorships and other identified means of revenue development.

Any activity, function or service not specifically mentioned in Exhibits "A" or "B" are the responsibility of Harvest Time, which can be changed upon a separate written agreement between the Parties.

**Exhibit B
City Responsibilities**

1. U-Pick Capital Program

The City will assist and support Harvest Time in promoting the Brentwood region as the U-Pick Capital including providing City staff administration services, and assistance with program development and implementation.

2. Program Manager Position

The City will provide financial assistance to Harvest Time for its hiring and employment of an U-Pick Capital Program Manager. The financial assistance provided by the City can be used for procuring contractors, personnel costs including wages, salary, payroll, benefits, and/or other direct administration costs as deemed acceptable by the City, in an amount not to exceed the following per fiscal year:

March 1, 2024 to June 30, 2024 - \$55,000
July 1, 2024 to June 30, 2025 - \$55,000
July 1, 2025 to June 30, 2026 - \$55,000

Harvest Time will submit an invoice with supporting documentation to the City quarterly for actual costs incurred and the City will provide payment on a reimbursement basis. Harvest Time acknowledges that City financial support is not guaranteed following expiration of this MOU.

3. Marketing Activities

The City will provide financial assistance to Harvest Time for marketing activities related to the U-Pick Capital Program. The financial assistance provided by the City can be used to hire consultants, provide paid advertisements through various media outlets, produce digital or printed marketing materials, and/or other marketing activities deemed acceptable by the City, in an amount not to exceed the following per fiscal year:

March 1, 2024 to June 30, 2024 - \$26,400
July 1, 2024 to June 30, 2025 - \$26,400
July 1, 2025 to June 30, 2026 - \$26,400

Harvest Time will submit an invoice with supporting documentation to the City quarterly for actual costs incurred and the City will provide payment on a reimbursement basis. Any activity, function or service not specifically mentioned in Exhibits "A" or "B" are the responsibility of Harvest Time, which can be changed upon a separate written agreement between the Parties.