

BRENTWOOD GROWN MARKETING AGREEMENT

This Marketing Agreement ("Agreement") is made between the City of Brentwood (the "City"), a California Municipal Corporation, conducting business at 150 City Park Way, Brentwood, California 94513 and <<Business Name>>, ("Marketer") located at <<Business Address>>, <<City>>, California <<Zip>>. This Agreement is effective on the day it is executed by both of the parties.

Recitals

1. The City has obtained Certification Marks from the United States Patent and Trademark Office (U.S. PTO) for the words "Brentwood Grown" (U.S. PTO Registration No. 3720127) and for the logo associated therewith (U.S. PTO Registration No. 3944746), an example of which is attached hereto as Exhibit A (collectively, "Certification Marks"). The Certification Marks, as used by persons authorized by the City, certify that the goods bearing these marks emanate from Brentwood, California. Their purpose is to increase awareness of and promote commerce in agricultural products emanating from the Brentwood region.

2. The City intends that the Certification Marks be used to enable retailers and consumers to differentiate agricultural products meeting the criteria set forth herein from agricultural products that do not meet the criteria. Farmers and growers wishing to use the Certification Marks must have a license agreement to do so with the City.

3. This Marketing Agreement will allow retailers and other organizations involved in the promotion or sale of certified Brentwood Grown products to use the Certification Marks to market those products that have been certified Brentwood Grown by the City of Brentwood. The Marketer will abide by all rules and regulations for the use of the Certification Marks set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

A. Grant of Marketing Rights

1. The City grants Marketer nonexclusive rights to use the Certification Marks on Marketer's advertising or promotion of products in accordance with, and subject to, the provisions of this Agreement.

B. Requirements of Certification Mark Use

1. The Marketer shall use the Certification Marks in connection with the advertising or promotion of those products with Certification Marks Licensing Agreements with the City. The Marketer shall obtain the consent of any Licensee whose products are used in connection with the Certification Marks.

2. The Marketer's advertising, promotional and merchandising materials that employ the Certification Marks shall not be, or make any claims that are, false, misleading, or deceptive, including, but not limited to, claims that discredit, disparage, or otherwise unfairly attack the quality, value, sale, or use of any competing product. The City shall retain sole discretion to make determinations under this provision. The Marketer shall at all times comply with advertising standards set by local, state and federal laws.

3. The Marketer shall provide reasonable assurances that it has a system in place to meet these requirements of use. The Marketer shall maintain records sufficient to audit this system for the life of this Agreement and shall make those records available to the City upon request.

C. Image Requirement

1. The Certification Marks shall only be reproduced in the colors and form displayed and/or described in Exhibit A of this Agreement.

2. The Certification Marks may be adjusted in size provided the proportions are not changed and the Certification Marks are not reduced to the point that it is not reasonably legible.

3. The Certification Marks shall not be altered in any way other than that specified herein.

4. The Marketer may not insert its name or trademark within or overlap the boundaries of the Certification Marks or present the Certification Marks in a manner that gives the impression that they are part of another mark.

5. The Marketer may not use either Certification Mark as its own mark, as the exclusive representation of Marketer's business or otherwise attempt to use the Certification Marks in an exclusive manner.

D. Ownership and Protection of the Certification Marks

1. The Marketer recognizes the great value of the goodwill associated with the Certification Marks and acknowledges that the Certification Marks and goodwill are the property of the City. Marketer agrees to do nothing to diminish the value of the Certification Marks and to reasonably assist the City in its efforts to protect the Certification Marks.

2. While the City intends to promote the Certification Marks and the consumer recognition thereof, nothing in this Agreement shall be construed to impose on the City any particular obligation or requirement to promote the Certification Marks.

E. Records

1. Marketer shall, at all times during the term of this Agreement, create and maintain records evidencing Marketer's compliance with the terms and conditions of this Agreement, including, but not limited to:

(a) Documents identifying that the agricultural products advertised or promoted in connection with the Certification Marks are licensees of the Brentwood Grown program.

(b) A description, including photographs, of how the Certification Marks are used on advertising and promotional materials, including types and quantities, and

(c) Examples of Marketer's actual use of the Certification Marks, with photographs of each example.

2. Marketer shall submit for inspection a statement of use containing the information and photographs described in E.1(b) and (c) at the end of each calendar year.

3. At any other time Marketer shall, upon the City's request and with reasonable notice, submit for inspection the records required to be maintained under this section.

F. Term and Termination

1. This Agreement shall commence on the effective date and shall continue indefinitely unless terminated under the provisions herein.

2. Marketer may terminate this Agreement by serving notice of such termination to the City. Such termination shall be effective upon receipt by the City.

3. The City may terminate this Agreement for any reason effective ninety (90) days from the date the City serves written notice of termination on Marketer. The City may also terminate this Agreement immediately upon notice of termination, should the City determine that Marketer has failed to comply with any of the obligations or conditions set forth in this Agreement.

4. Upon termination, Marketer shall cease using the Certification Marks within thirty (30) days. If, however, the City terminates this Agreement based on concerns relating to standards of sanitation, consumer safety or the violation of any local, state or federal law, the City may require the Marketer to immediately cease using the Certification Marks and require the Marketer to recall products bearing the Certification Marks.

5. Marketer acknowledges that improper use of the Certification Marks would result in irreparable harm, and the City may seek and obtain a court order restraining Marketer further use of the Certification Marks. The remedies provided herein are cumulative and in addition to any other rights or remedies the City may have at law or equity.

G. Indemnification and Insurance

1. Marketer shall indemnify and hold harmless the City and each of its respective employees, officers, directors, and agents from any claims, actions, suits, injuries, damages, costs, expenses (including, but not limited to, attorneys' fees), and/or other liabilities arising out of or connected with: (i) Marketer's use of the Certification Marks; (ii) Marketer's breach of this Agreement; and/or (iii) the promotion, sale, use, or consumption of Marketer's product.

H. Miscellaneous Conditions

1. Attorney's Fees. In any litigation between the Parties related to this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and expenses and actual costs of suit.

2. Assignment and Sublicense Prohibited. The permission to use the Certification Marks herein granted is personal to Marketer and may not be assigned or transferred in any way without prior written consent of the City. Marketer may not sublicense use of the Certification Marks.

3. Entire Agreement. This Agreement, which includes and incorporates the recitals and exhibits, constitutes the entire agreement between the Parties and supersedes any prior understanding or agreements between the Parties relating to this subject matter.

4. Waiver and Modification. None of the provisions of this Agreement may be waived or modified except expressly in a writing signed by both Parties.

5. Applicable Law and Forum. This Agreement shall be governed by the laws of the State of California, without reference to its conflicts of law provisions, as though entered into between California residents and to be performed entirely within the State of California. All parties consent to jurisdiction and venue in the state and federal courts sitting in the State of California and in particular, within Contra Costa County, California.

6. Severability. In the event any term, condition or provision of this Agreement is determined to be void, invalid, illegal or unenforceable, it shall, only to that extent, be deemed stricken. However, all other provisions shall remain and constitute the Agreement among the parties.

7. Compliance With Local, State and Federal Law. Marketer shall comply with all applicable local, state and federal laws, including equal opportunity laws, with respect to the production, marketing and sale of agricultural products marked with the Certification Marks.

8. News Releases/Interviews. All news releases, media interviews, testimony at hearings and public comment concerning this Agreement shall be prohibited unless expressly authorized by the City.

9. Notices. All written notices to be given hereunder, whether pursuant to this Agreement or a provision of law, shall be either delivered in person or by the United States mail, postage prepaid. Unless stated otherwise herein, notices shall be effective and/or deemed served upon personal delivery or three (3) days after mailing. Notices shall be addressed as follows:

To City: City of Brentwood
Attn: Economic Development Manager
150 City Park Way
Brentwood, CA 94513

To Marketer: <<Business Owner Name(s)>>
<<Business Name>>
<<Business Address>>
<<City>>, CA <<Zip>>
(XXX) XXX-XXXX

10. Execution. This Agreement may be executed in any number of counterparts. If this Agreement or any counterpart is signed and then faxed, the faxed copy bearing the signature shall be as good as the original, wet-ink signed copy for all intents and purposes.

11. Authority To Execute. Each party represents and warrants that: (a) it has full power and authority to make, execute and perform this Agreement; (b) the provisions of this

Agreement have been duly authorized and approved by all necessary action; and (c) the undersigned officers have been duly authorized to execute and deliver this Agreement on behalf of the represented party.

12. Survival of Provision. Sections D, F, G, and H of this Agreement shall survive any termination of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date described below.

<<Business Name>>

_____, **Marketer**
<<Business Owner Name>>

_____, **Marketer**
<<Business Owner Name>>

Date: _____

City of Brentwood

By: _____
Economic Development Manager

Date: _____

Exhibit A to the Brentwood Grown Marketing Agreement

For marketing purposes, such as labels, brochures, banners, websites and advertising, the certification mark shall be used in the following form:

