

AMENDED AND RESTATED 2024 MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF MURRIETA

AND MURRIETA MARKET NIGHTS INC. REGARDING THE IMPLEMENTATION OF
MURRIETA MARKET NIGHTS

This Memorandum of Understanding (“Agreement”) regarding the implementation of Murrieta Market Nights is entered into on this ____ day of _____, 2024, by and between, the City of Murrieta (City”), a municipal corporation, and Murrieta Market Nights Inc., a California Non-Profit corporation (“Company”). The City and Company are collectively referred to here as the “Parties”.

RECITALS

- A. City owns and operates public right-of-way along Washington Avenue, between B and C Streets and Juniper Street between Plum and 1st Streets (“Site”) which is depicted on Exhibit "A", attached hereto.
- B. Company has been operating a street market (“Event”) on the Site pursuant to prior agreement which expired on November 11, 2024 if not extended.
- C. The City desires to continue accommodating Company’s desire to use the site for the purposes and on the terms described herein.

NOW, THEREFORE, the City agrees that the Site may be used and occupied by Company’s officers, visitors, staff, vendors and invitees (“Company Parties”) subject to the restrictions hereinafter set forth, which restrictions are established for the benefit of and the use of visitors to the Event.

THE PARTIES HEREBY AGREE

I. Non-Exclusive Use.

- A. Company is granted a non-exclusive License to use to use the Site under the terms herein, and the City hereby reserves and retains the right to make any permitted use of the Site, to the extent that the permitted use does not interfere with the rights granted to Company under this agreement.
- B. Notwithstanding the forgoing, the City will not enter into other agreements for the right to use any portion of the Site in conflict with the Company’s use, so long as Company abides by the Terms set forth in this Agreement and this Agreement remains in full force and effect.

II. Term.

Unless earlier terminated in accordance with this Agreement, this Agreement shall entitle Company to use the Site commencing on November 11, 2024, for a period of 24

months, ending November 10, 2026 (“Term”). This Agreement may be extended only upon approval of a written agreement signed by both parties.

III. Use.

- A. The Site shall be used by the Company for the sole purpose of preparing for, conducting, and cleaning up after each use of the Site for each Event. An Event may include the erection of canvas pop-up canopies or tents and tables to be used to display merchandise or food items which shall be for sale to the general public. The Site shall be used for these purposes, and no other purposes, without the prior written consent of the City’s City Manager or designee, at the City’s sole discretion.
- B. Additionally, Company shall:
1. Ensure that no one participating in the Event sells, or allow the sale of, any alcohol or cannabis products at any time on the Site.
 2. Arrange for the disposal of all trash and debris from the Site at the completion of each use of the Site and provide all necessary trash receptacles(s) as required by the City. A trash receptacle shall be required at each vendor location from which food and/or beverage items for immediate consumption are sold.
 3. Provide all necessary electrical generators, if required, and any such generators shall be approved by the City before use.
 4. Obtain all appropriate and necessary permits, including, but not limited to, City encroachment permits, City use permits (at no cost to Company) and County Health Department permits and any requisite State Agriculture permit at Company’s sole expense.
 5. Ensure that all Company Parties provide clean ground protection in the form of a tarp or tarp like material sufficient to prevent any waste, damage, or injury to City’s property or adjacent property from all Company Party equipment and/or materials.
 6. List the City of Murrieta as a partner for each Event on all marketing and advertising materials.
 7. Brand all Events as “Murrieta Market Nights,” with the City logo on all branding materials. The words “In partnership with the City of Murrieta” shall appear on all marketing and branding materials.
 8. Ensure that each vendor at each Event has a City of Murrieta Business license. The City has a limited-duration Business License program available at a lower cost which most vendors will qualify for.

IV. Hours of Operation. The Event may be operated on the First and Third Thursdays of every month from 5:00 pm to 9:00 pm during the Term of this Agreement other than City holidays. The City Manager may, in his or her sole discretion, revise the hours of operation and the hours for set up and clean-up of the Event by delivering written notice of such change, and the effective date thereof, to Company. At the conclusion of each period of use, Company shall tear down and/or clean up all items brought to the Site by any person in connection with the Event. The failure to tear down or clean up the Site may result in termination of the License granted herein at the sole discretion of City.

V. Fees.

A. As a License Fee for use of the Site, Company shall pay a monthly fee of One Hundred Dollars (\$100) paid quarterly, no later than on the last day of the month in each quarter (March 31, June 30, September 30, December 31); and

VI. Damage to Property.

A. The Company, whether or not actually present at the Site, is liable for all damages to the Site occurring during the hours of operation of any Event.

B. The City shall have the right, without notice, to sell, destroy or otherwise dispose of any personal property left on the Site by Company or Company Parties after Company has vacated or abandoned the Site after any period of use.

VII. City shall:

A. Deploy Meridian Barricades, Type III barricades, and road closure signage for the Events on the first and third Thursdays of each month. City shall be responsible for all staffing costs incurred for this purpose.

B. Assist with marketing and advertising for the Events. "Assist" refers to the City's Public Information Officer (PIO) helping develop marketing and advertising materials for the Events and posting them on the City's website and other social media platforms.

C. Process Company's requests for renewals or extensions of this Agreement, at no cost to Company.

D. Consider any Company requests to expand the Event at the City's sole discretion, at no cost to the Company.

VIII. Annual Statement of Expenses

No later than sixty (60) days following each anniversary of this Agreement, Company shall provide an overall revenue and cost report to the City's Finance Director in a

mutually agreed upon format that lists all revenues and costs specific to the Event such that Company is providing a detailed description of the event's overall revenues and expenses. Should the City request receipts and/or Company's 501(c)(3) filings to audit the information in the report, Company shall make such information available to the City within five (5) business days.

The report shall, at a minimum, include (i) information on the wages and salaries (including management fees) of all of Company's employees and partners engaged in the operation, maintenance and security of the Event, including taxes, insurance and benefits paid to such employees, (ii) a detailed listing of all supplies and materials used in the operation of the Event; and (iii) Insurance expenses.

IX. General Insurance Requirement.

- A. Proof of insurance. Company shall provide original certificates of insurance and endorsements for itself and all vendors, to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. City reserves the right to require complete, certified copies of all required insurance policies, at any time. Every vendor that Company allows to use the Site shall be endorsed as an additional insured on the Company's policy or maintain insurance equal that required below for Company.
- B. General Liability Insurance. The Company shall have a policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than **\$2,000,000.00** with an aggregate of **\$4,000,000.00** against liability for damages due to injury, including death, and against liability for damages to property. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- C. Automobile Liability. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than a combined single limit of **\$1,000,000.00**.
- D. Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- E. Primary/noncontributing. Coverage provided by Company shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

- F. City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Company or City will withhold amounts sufficient to pay premium from Company payments. In the alternative, City may cancel this Agreement.
- G. Acceptable insurers. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VI, unless otherwise approved by the City's Risk Manager.
- H. Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Company or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Company hereby waives its own right of recovery against City.
- I. Enforcement of contract provisions (non-estoppel). Company acknowledges and agrees that any actual or alleged failure on the part of the City to inform Company of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- J. Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Company maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- K. Notice of cancellation. Company agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.
- L. Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.
- M. Agency's right to revise specifications. The City reserves the right at any time

during the term of the contract to change the amounts and types of insurance required by giving the Company ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Company, the City and Company may renegotiate Company's compensation.

- N. Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.
- O. Additional insurance. Company shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.
- X. Indemnification. To the full extent permitted by law, Company agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the performance of the work, operations or activities provided herein of Company, its officers, employees, agents, subcontractors, invitees, or any individual or entity for which Company is legally liable ("indemnitors"), or arising from Company's or indemnitors' reckless or willful misconduct, or arising from Company's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, or otherwise arising in connection with the Event except claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions. The indemnity obligation shall be binding on successors and assigns of Company and shall survive termination or expiration of this Agreement.
- XI. Hold Harmless Agreements. Company shall obtain a signed waiver and hold harmless agreement from each vendor, in a form approved by the City, before allowing any vendor to participate in any Event. Each such agreement shall waive any claims against and hold harmless City from any liability for damages incurred by any such participating vendor.
- XII. Miscellaneous Provisions.
- A. No change, amendment, alteration, or revision of this Agreement shall be valid unless evidenced by a written agreement approved and executed by both City and Company.
- B. City represents that as of the effective date hereof, it is the sole owner of the Site and that it has the authority to enter into this Agreement and that, once authorized and in effect, this Agreement is a valid and binding obligation of City.
- C. Company represents the person signing this Agreement on its behalf has the authority to bind Company to the same.

- D. Company shall not assign its rights under this Agreement in whole or in part, nor sublet the Site or any portion of the Site to any party without the prior written consent of the City. In the event of a breach of this condition, the City shall have the power to immediately declare this Agreement terminated and retake immediate possession of the Site.
- E. Neither the City nor any of its employees, officers or agents shall have any control over the manner, mode, or means by which Company's agents, volunteers or employees perform the services required herein, except as otherwise set forth herein. The City shall not have a voice in the selection, discharge, supervision, or control of Company's employees, servants, representatives, volunteers or agents, or in fixing their number, compensation, or hours of service. Company shall perform all services required herein as an independent contractor with only such obligations as are consistent with that role. Company shall not at any time or in any manner represent that it or any of its agents, volunteers or employees are agents or employees of the City. City shall not in any way or for any purpose become or be deemed to be a partner of Company in the operation of their business or otherwise or a joint venturer or a member of any joint enterprise with Company.
- F. The failure or omission of the City to terminate or otherwise enforce this Agreement for any violation of any of its terms, conditions or covenants, shall not be deemed to be a consent by the City to such violation and shall not bar, stop or prevent the City from terminating or otherwise enforcing this Agreement thereafter, either for such or for any subsequent violation of any such term, condition or covenant.
- G. This Agreement shall be governed by, interpreted under, and constructed and enforced in accordance with the laws of the State of California. Venue for any dispute shall be in the courts of the County of Riverside, California.
- H. If any paragraph, section, sentence, clause, or phrase contained in this Agreement shall become illegal, null or void, against public policy, or otherwise unenforceable, for any reason, or held by any court of competent jurisdiction to be illegal, null or void, against public policy, or otherwise unenforceable, the remaining paragraphs, section, sentences, clauses or phrases contained in the Agreement shall not be affected thereby.
- I. Either Party may terminate this Agreement at any time, with or without cause, upon a 60-day written notice to the other Party. Upon receipt of any notice of termination during the Term, Company shall immediately cease any advertising or marketing of any Events after the termination date and shall clean, repair and vacate the Site. Any financial obligations of Company incurred before the date of termination shall continue to be enforceable after any such termination.
- J. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered in person to the party

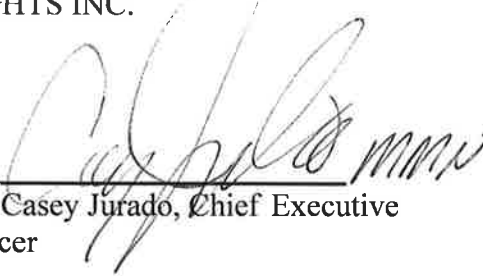
to whom it is addressed or three (3) days after mailing, if mailed by first class mail. For purposes of notice, the address of the parties shall be as follows:

City: City of Murrieta, Attn: City Manager, 1
Town Square
Murrieta, CA 92562


Company: Murrieta Night Markets, Inc.
24810 Washington Avenue
Murrieta, CA 92562

IN WITNESS WHEREOF, the undersigned have executed this Agreement was executed as of the date first written above.

"Company": MURRIETA MARKET NIGHTS INC.

By: 
Casey Jurado, Chief Executive Officer

By: 
Pamela Hosey, Secretary

By: 
Connie McConnell, Chief Financial Officer

"City": CITY OF MURRIETA

By: _____
Kim Summers, City Manager

ATTEST:

Cristal McDonald, City Clerk

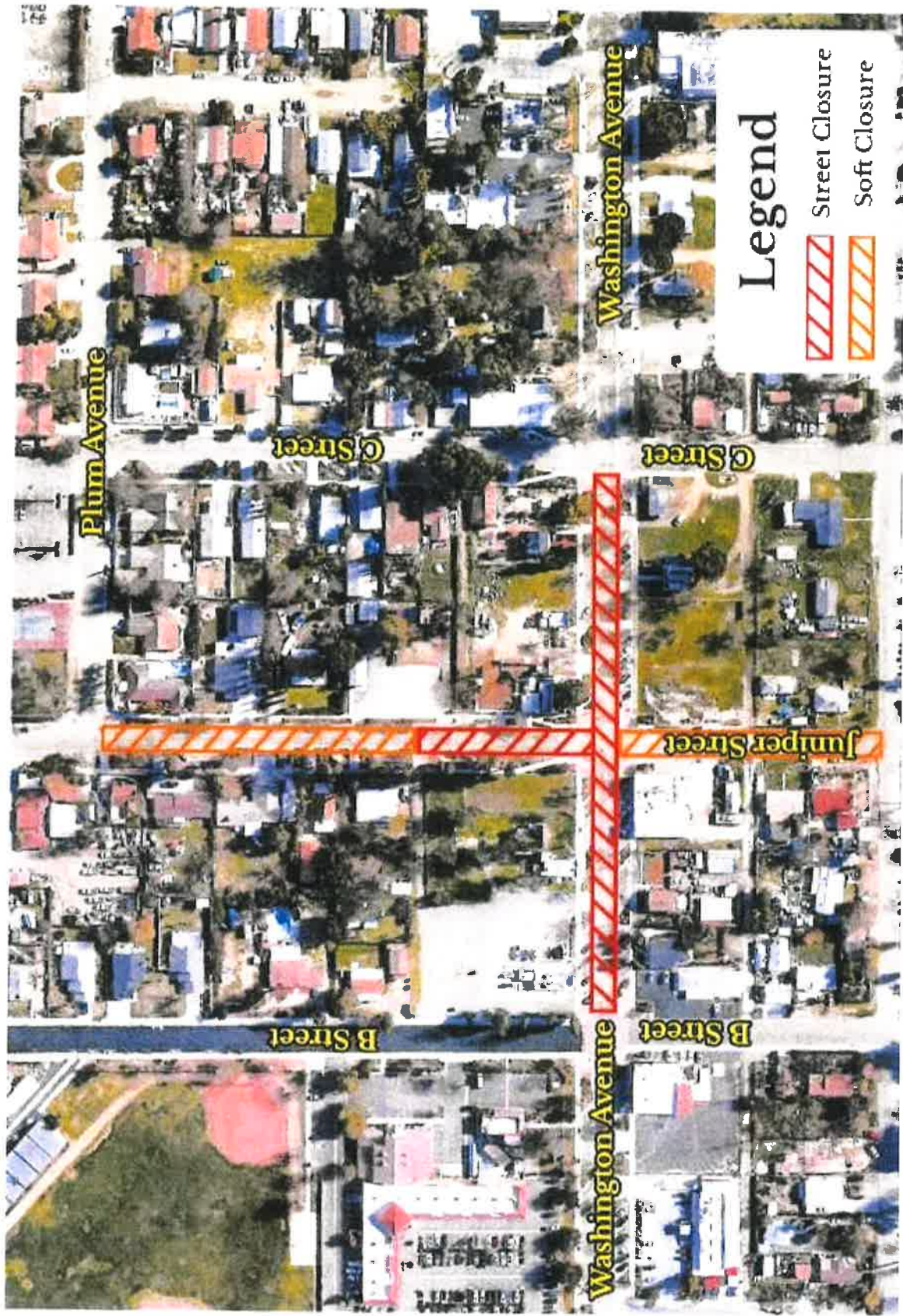
APPROVED AS TO FORM:

Tiffany Israel, City Attorney

EXHIBIT "A"

STREET CLOSURE EXHIBIT

[on the next page]



Legend

-  Street Closure
-  Soft Closure

Plum Avenue

C Street

Washington Avenue

C Street

Juniper Street

B Street

Washington Avenue

B Street