



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

DATE: June 6, 2013
TO: Recreation and Park Commission
THRU: Philip A. Ginsburg, General Manager
Dawn Kamalanathan, Director of Capital & Planning Division
FROM: Holly Pearson, Capital & Planning Division
RE: Noe Valley Farmers' Market Permit at 3861 24th Street

Agenda Item Wording

NOE VALLEY FARMERS' MARKET PERMIT: Discussion and possible action to approve the issuance of a 6-month permit to the Noe Valley Farmers' Market for operation of a weekly Saturday farmers' market at the future park site at 3861 24th Street, subject to the Board of Supervisors' approval of pending legislation to acquire the site.

Background

At its meeting of April 18, 2013, the Recreation and Park Commission voted to recommend that the Board of Supervisors approve the acquisition of the property located at 3861 24th Street in San Francisco (the Property) for a new public park to be operated by the Recreation and Park Department (RPD). On May 22, the Budget and Finance Committee of the Board of Supervisors forwarded the proposed acquisition to the full Board with a positive recommendation. The vote of the full Board is scheduled for June 4. Subject to the Board's approval of the legislation, close of escrow on the Property is scheduled to occur on July 1, 2013.

Since 2003, the Noe Valley Farmers' Market has operated at the Property weekly on Saturday mornings from 8:00 am to 1:00 pm pursuant to a lease with the current owner of the Property, the Noe Valley Ministry church. The Noe Valley Farmers' Market was organized and founded by a small group of neighborhood residents in 2003. These residents successfully launched a community-driven and community-oriented market that has become a very popular weekend event in the neighborhood. The Farmers' Market is not only a place where residents and visitors to the City come to buy fresh produce and other products – it is also a gathering place where people come to see and socialize with their neighbors, and to enjoy the experience of community.

RPD and the Noe Valley Farmers' Market desire that the market continue to operate on the Property if and when the City completes its purchase of the Property. Pursuant to Park Code Section 7.21, the Recreation and Park Commission may permit the location of a Farmers' Market on park land upon findings that such a use: (1) Is appropriate for the crowd capacity of the particular location; (2) Does not adversely affect park grounds or facilities beyond the regular usage of the particular location; and, (3) Does not significantly interfere with the public's use and enjoyment of other areas of the park, including, but not limited to, children's play areas or athletic courts or fields.

Permit Description

The proposed permit for the Noe Valley Farmers' Market (attached hereto as Attachment A) would be administered through RPD's Permits and Reservations office. Per Park Code Section 7.21, once approved by the Commission, the permit would be issued for a period of six months, with a fee of \$475, and could be renewed by RPD staff every six months thereafter. Issuance of the permit is subject to the Board of Supervisors' approval of the acquisition of the Property.

Park Code Section 7.21 requires that the Commission adopt three findings regarding the proposed farmers' market. Set forth below are staff's recommended findings:

(1) The use is appropriate for the crowd capacity of the particular location

The Noe Valley Farmers' Market has operated at the subject property, 3861 24th Street, for nearly ten years without incident. The property consists of an open, 10,829 square foot lot paved with asphalt. The market currently hosts about 22 vendors' tents and attracts, on average, about 2,100 visitors over the course of the market day. These visitors tend to be distributed throughout the 5-hour duration of the market. Under the proposed permit, the market would continue to operate at its current capacity. Based on the ten-year history of the market's successful and safe operation at the site, and based on RPD staff's observations of the market's operations at the site, the property is of adequate size and configuration to accommodate the typical crowd size of customers and visitors to the market. Therefore the use is appropriate for the crowd capacity of the site.

(2) The use does not adversely affect park grounds or facilities beyond the regular usage of the particular location

Under the terms of the proposed permit, the Noe Valley Farmers' Market will be responsible for cleaning the site, removing all trash and compost generated, and leaving the property in the same condition as it was found. The permittee will be required to keep the site in good, clean, safe, secure, sanitary and sightly condition. The permittee will also be responsible for any damages caused to the site by the market's operations and will have to submit a security deposit. As a result, the market will not adversely affect the grounds or its facilities beyond the regular usage of the site.

(3) The use does not significantly interfere with the public's use and enjoyment of other areas of the park, including, but not limited to, children's play areas or athletic courts or fields.

The site currently consists of an asphalt-paved lot with landscaping around the perimeter, and a small public seating area in the northeast corner with benches, trees, and landscaping. For approximately 18 months after RPD's purchase of the property, the site will remain in its current configuration while RPD seeks funding to develop the property into a park. The property currently does not have any children's play areas or athletic courts or fields and therefore the market will not interfere with the public's use of such areas. Moreover, the market will operate only one day a week from 8am-1pm, and during market days, the entire site, including the public seating area, will be accessible to all members of the general public. Accordingly, the market will not significantly interfere with the public's use and enjoyment of the property.

These findings are set forth into the attached Resolution (Attachment B).

Environmental Review

On April 10, 2013, the San Francisco Planning Department issued a Categorical Exemption pursuant to the California Environmental Quality Act (CEQA) for the City's purchase of the 3861 24th Street property, its use as a public open space, and the continued weekly operation of the Noe Valley Farmers' Market.

Support:

As noted above, the Noe Valley Farmers' Market is extremely popular with area residents as well as residents of other neighborhoods and visitors to the city. Support for the market in general, and for its continuance under RPD ownership of the property, is demonstrated by the approximately 2,100 customers who visit the market each week. In addition, to date RPD staff has received 43 letters of support from community members for the acquisition of the 3861 24th Street property, noting the importance of the farmers' market to the Noe Valley community.

Supported by:

Noe Valley Farmers' Market
Residents for Noe Valley Town Square

Opposition:

There is no known opposition to the continuance of the weekly Noe Valley Farmers' Market, nor to RPD's issuance of a permit for the market.

Recommendation:

Staff recommends that the Recreation and Park Commission adopt a resolution approving the issuance of a 6-month permit to the Noe Valley Farmers' Market, for operation of a weekly Saturday farmers' market at the new park property located at 3861 24th Street.

Attachments

Attachment A: Permit for Noe Valley Farmers' Market
Attachment B: Resolution

REVOCABLE PERMIT TO ENTER AND USE PROPERTY
(Farmers' Market)

THIS REVOCABLE PERMIT TO ENTER AND USE PROPERTY (Farmers' Market) (this "Permit"), dated as provided below, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Recreation and Park Commission (the "Commission"), and NOE VALLEY FARMERS' MARKET, a California corporation ("Permittee"). City and Permittee agree as follows:

1. BASIC PERMIT INFORMATION; DEFINITIONS

1.1 Basic Permit Information

<i>Permit Date:</i>	_____, 2013
<i>Permit Area:</i>	That certain property located at 3861 24th Street, San Francisco, California, generally shown on <u>Exhibit A</u> .
<i>City's Address for Notices:</i>	Recreation and Park Department Permits and Reservations 501 Stanyan Street San Francisco, CA 94117 Attention: General Manager Re: Farmers' Market Permit at Noe Valley Town Square
<i>Permittee's Contact Person:</i>	Leslie Crawford Telephone: 415-794-5484 Email: leslie.crawford@mindspring.com
<i>Permittee's Address for Notices:</i>	Noe Valley Farmers' Market 4104 24th Street, #401 San Francisco, CA 94114
<i>Purpose of Permit:</i>	Operation of a certified public farmers' market for the sale of agricultural and horticultural products, fresh and dried, and fish by the growers, producers or fishers thereof, together with limited ancillary sale of baked goods, value-added products and prepared foods (the "Market"). See <i>Section 3</i> . _____
<i>Term:</i>	The Term of this Permit shall commence on the later of the Effective Date or July 1, 2013, and shall expire on December 31, 2013.
<i>Date and Time of Event:</i>	Every Saturday during the term of this Permit (each, a "Market Day"), during the hours of 8:00 AM to 1:00 PM, with load-in commencing no earlier than 6:30 AM and load-out and clean up completed no later than 3:00 PM.
<i>Permit Fee:</i>	Four Hundred Seventy-Five Dollars (\$475.00) See <i>Section 6(a)</i> .
<i>Security Deposit:</i>	Five Hundred Dollars (\$500.00) See <i>Section 6(b)</i>

<i>Exhibits and Attachments:</i>	Exhibit A – Depiction of Permit Area Exhibit B – Special Rules and Regulations Exhibit C – General Department Rules and Regulations Exhibit D – Vendor Waiver and Release Exhibit E – Approved Market Rules and Vendor Agreement
----------------------------------	--

1.2 Definitions

As used in this Permit, the following terms shall have the following respective meanings:

- (a) “Commission” means the Recreation and Park Commission of the City and County of San Francisco, or the General Manager thereof when acting for and on behalf of the Commission.
- (b) “Department” means the Recreation and Park Department of the City and County of San Francisco.
- (c) “Effective Date” shall mean the date that this Permit is signed and delivered by the Permittee and by the authorized representative of City.
- (d) “General Manager” shall mean the General Manager of the City’s Recreation and Parks Department or his or her designee.
- (e) “Vendor” means a party selling products at the Market.

2. LICENSE; PERMIT AREA. City confers to Permittee a revocable, temporary, personal, unassignable, and non-exclusive privilege to enter upon and use that certain real property owned by City located at 3861 24th Street, San Francisco, California, generally shown on Exhibit A (the “Permit Area”), including the small structure located adjacent to the seating area (the “Parking Kiosk Structure”), for the limited purpose, on the dates and times, and subject to the terms, conditions and restrictions set forth below. This Permit gives Permittee a license only, revocable at any time at the will of City on delivery of sixty (60) days written notice of revocation and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by City of any ownership, possessory, leasehold, easement or other property interest or estate whatsoever in the Permit Area, or any portion thereof or improvements thereon, subject to all the terms and conditions of this Permit. The privilege given to Permittee under this Permit is effective only insofar as the rights of City in the Permit Area are concerned, and Permittee shall obtain any further permission necessary because of any other existing rights affecting the Permit Area.

3. USE OF PERMIT AREA – SCOPE OF PERMITTED USE.

- (a) Generally. Permittee shall use the Permit Area during the term for the sole purpose of conducting a Market as described in Section 1.1 above, selling quality and reasonably priced goods. Permittee shall cause the Market, including, without limitation the stalls, to be configured so that there are walkways and sufficient area for pedestrian ingress, egress and circulation and to minimize any potential tripping or other hazards. Permittee must comply with all applicable provisions of the California and San Francisco Building Codes, the Americans with Disabilities Act and any other applicable disability access requirements.
- (b) Market Days and Hours. The Market will take place on the dates and at the times set forth in Section 1.1 above (the “Market Hours”), including load-in, load out, and clean up.
- (c) Daily Clean-Up. At the end of each Market Day’s operation permitted under this Permit, Permittee shall surrender the Permit Area in the same condition as received. At such time, Permittee shall remove and cause the Vendors to remove all of their respective property from the Permit Area, including personal property, stalls and other temporary installations and any signs permitted hereunder, shall clean the Permit Area, including the interior of the Parking Kiosk Structure and any other improvements, shall hose down or steam clean the surface of the Permit Area, and shall remove all waste, trash, recyclables and compost from the Permit Area. Permittee's obligations under this Section shall survive any termination of this Permit.
- (d) Permits and Approvals. Before beginning any permitted activity in the Permit Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, “approvals”) of all

regulatory agencies and other third parties that are required to operate the Market, including, without limitation, any permit required or provided by the San Francisco Department of Public Health, the San Francisco Fire Department, and the San Francisco Planning Department and any approval required by the San Francisco Agricultural Commissioner.

(e) Department Rules and Regulations. Permittee shall comply and shall cause the Vendors to comply with the Department's rules and regulations relating to park property, as the same may change from time to time. A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached hereto as Exhibit C. In addition to such general rules and regulations, Permittee shall comply and shall cause the Vendors to comply with the rules and regulations attached hereto as Exhibit B and such other rules and regulations governing the operation of the Market and Permit Area as the Department shall from time to time reasonably impose.

(f) Permittee's Rules and Regulations. Permittee shall establish and enforce reasonable rules and regulations for the orderly conduct of the Market, which rules and regulations shall be subject to the prior written approval of the General Manager or his or her designee. The General Manager hereby approves the rules and regulations attached hereto as Exhibit E.

(g) Vendors.

(i) Generally. Market Vendors may bring onto the market premises, keep in their possession, offer to sell or sell only such market or farm produce and edible merchandise which has been produced on land owned or possessed by, or, in the case of fish, caught or bred by the person in accordance with Chapter 9A.14 of the Administrative Code.

(ii) Vendor Permits and Approvals. Permittee shall cause each Vendor to obtain any and all permits, licenses and approvals of all regulatory agencies and other third parties that are required for such Vendor to operate at the Market, including, without limitation, any permit required or provided by the San Francisco Department of Public Health, the San Francisco Fire Department, and the San Francisco Planning Department and any approval required by the San Francisco Agricultural Commissioner.

(iii) Vendor Agreement; Waiver and Release. Prior to each Market Day, Permittee shall obtain from each Vendor operating on the Permit Area on such Market Day a signed vendor agreement in form and content approved by the General Manager or his or her designee in writing, and a waiver and release form in the form attached hereto as Exhibit D. At Permittee's election any such vendor agreement may apply to multiple Market Days during the term of this Permit. Permittee shall retain such executed waiver and release forms, and shall provide the original executed forms to City at City's written request given from time to time. The General Manager hereby approves the form of Vendor agreement attached hereto as Exhibit E.

(iv) Quality of Products. Permittee hereby agrees that any product, food or refreshments offered for sale by any Vendor under this Permit shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. The Department shall have the right to reasonably object to the quality of the food, beverages, and service(s) provided and Permittee shall have the obligation to promptly address those objections until corrected to the satisfaction of the Department.

(v) Displays and Pricing. Permittee shall cause Vendors to display commodities neatly with accurate price signs visible to customers.

(h) General Availability of Permit Area to Others. At all times during the term of this Permit, and subject to the provisions of this Permit, the use of the Permit Area shall be available for such other events and uses as City may, in its discretion, determine, as long as such events do not unreasonably interfere with the Market.

(i) Park Improvements. At times, the City use part or all of the Permit Area to install park improvements. In such instances the City retains the right, in its sole discretion, to prohibit Permittee from operating during the installation period. In such instances City will use reasonable efforts to give Permittee not less than thirty (30) days notice of the period during which Permittee will be prohibited

from operating. The fee payable hereunder shall not prorated to account for Permittee's inability to use the Permit Area during the construction period.

(j) Special Events. At times, the City may permit a special event in the park location permitted herein. In such instances the City retains the right, in its sole discretion, to prohibit Permittee from operating during the length of the special event. In such instances City will use reasonable efforts to give Permittee not less than fourteen (14) days notice of the period during which Permittee will be prohibited from operating. The fee payable hereunder shall not prorated to account for Permittee's inability to use the Permit Area during the special event or the construction period. City shall not exercise this right more than two (2) times during the six (6) month term of this Permit.

(k) Seating Area; Furniture. During Permittee's hours of operations Permittee may provide tables and chairs in the area generally depicted on Exhibit A (the "Seating Area"), for use of its customers and the general public. The furniture used in the Seating Area shall be attractive and good quality. Permittee shall repair or replace the furniture used in the Seating Area from time to time as required to maintain such furniture in a first class condition. The tables and chairs in the Seating Area shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards. Permittee, at Permittee's sole cost and expense, shall remove the tables and chairs from the Seating Area each day at close of business. During Permittee's hours of operation, Permittee shall keep the Seating Area and the furniture free of dishes, utensils, food, debris and spills and in a neat, clean, orderly and attractive condition at all times, and shall, as necessary, provide and empty garbage receptacles serving such area. If Permittee fails to maintain the Seating Area in the condition required hereunder, the City may provide written or oral notice to the Market manager or senior employee or representative then on duty, describing such deficiency (the "Cleaning Default"), and Permittee shall promptly correct the deficiency. Failure to comply with this Section shall constitute a breach of this Permit which may result in termination under the provisions of Section 7(b) below. Permittee acknowledges that the Seating Area is open to the public, and Permittee cannot limit use of the Seating Area to customers of Permittee's Vendors, and cannot prohibit the consumption of outside food and beverages in the Seating Area.

(l) Financial Records. Permittee shall maintain fiscal records and accounts in accordance with systems and procedures prescribed by law for non-profit corporations. Upon City's written request, Permittee shall provide to City a financial report which at a minimum includes income and expenses for Permittee's operation of the Market during the fiscal year specified by City, broken down by category.

4. RESTRICTIONS ON USE. Permittee agrees that, by way of example only and without limitation, the following uses of the Permit Area by Permittee or any other person claiming by or through Permittee are inconsistent with the limited purpose of this Permit and are strictly prohibited as provided below:

(a) Improvements. Except as otherwise expressly provided in this Permit, Permittee shall neither (i) construct or place any temporary or permanent structures or improvements nor (ii) alter any existing structures or improvements on, within, or under the Permit Area without the prior written approval of Department staff.

(b) Dumping. Permittee shall not dump or dispose of refuse or other unsightly materials on, in, under or about the Permit Area.

(c) Hazardous Material. Permittee shall not cause, nor shall Permittee allow any of its Agents or Invitees (as defined in Section 16 below) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Permit Area, or transported to or from the Permit Area, except for commercially reasonable quantities of propane or other Hazardous Materials used in the ordinary course of a Vendor's operation on the Permit Area, and then only if such Hazardous Materials are used, stored and disposed of safely and in accordance with applicable law. Permittee shall immediately notify City when Permittee learns of, or has reason to believe that, a release of Hazardous Material has occurred on the Permit Area. Permittee shall comply with all laws requiring notice of such releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. If Permittee or its Agents or Invitees cause a release of

Hazardous Material, Permittee shall, without cost to City and in accordance with all laws and regulations, return the Permit Area to the condition immediately prior to the release. In connection therewith, Permittee shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material. For purposes hereof, "Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment, including, without limitation, petroleum, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Permit Area.

(d) Nuisances. Permittee shall not conduct any activities on or about the Permit Area that constitute waste, nuisance or unreasonable annoyance to City, to the owners or occupants of neighboring property or to the public.

(e) Damage. Permittee shall not do anything about the Permit Area that will cause damage to any of City's property.

(f) No Unapproved Signs or Displays Permitted. Permittee shall not mar or deface any part of the Permit Area, nor shall it display any signs, pictures, notices or advertisements within the Permit Area, without the prior written consent of the General Manager or his or her designee, in his or her sole reasonable discretion, which consent shall not be unreasonably withheld or delayed for signage reasonably required for the orderly operation of the Market.

(g) No Smoking. Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes. San Francisco Health Code Section 1009.81. Permittee shall not knowingly or intentionally permit the smoking of tobacco products in the Permit Area.

5. OTHER COVENANTS AND DUTIES OF PERMITTEE.

(a) Department Requirements Regarding Security and Crowd Control. Permittee shall conduct and cause each Vendor to conduct its activities at all times with full regard for public safety and shall observe and abide by all applicable regulations and requests of Department, Commission and of duly authorized governmental agencies responsible for public safety. This requirement for security in no way precludes any requirements that may be set by the San Francisco Police Department or any other regulatory agency.

(b) Payment of Taxes and Fees for Licenses and Permits. In strict accordance with Section 6(c) below, Permittee agrees to pay promptly all taxes (including without limitation any possessory interest tax) or license fees required for the operation of the Market, which may be required by federal state or local governmental agencies.

(c) Mitigating Neighborhood Impact. Permittee recognizes and acknowledges that the Market may have adverse impacts upon the neighborhood(s) surrounding the Permit Area. Because of such potential adverse impacts, Permittee agrees that the General Manager may impose additional requirements upon the Permittee, if the General Manager and Permittee reasonably determine that such additional requirements are necessary and/or appropriate for the successful mitigation of any adverse impacts on the neighborhood(s) surrounding the Permit Area caused by the operation of the Market.

(d) City's Police Powers. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. The foregoing notwithstanding, however, nothing herein shall limit in any way City's rights and powers to enact legislation and impose regulatory requirements or restrictions upon the use of the Permit Area, for the health and safety of the public.

(e) Intellectual Property; Music Broadcasting Rights. Permittee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Permit Area, including, but not limited to musical or other performance rights.

(f) Due Care; Securing Permit Area. Permittee shall ensure that the doors of the Parking Kiosk Structure are closed and locked and that all water faucets, water apparatus and utilities are shut off before Permittee or Permittee's employees leave the Permit Area, so as to prevent waste or damage. Permittee shall comply with any other security measures (such as locking gates) reasonably imposed by City from time to time for the security of the Permit Area during off hours.

6. FEES, DEPOSITS AND REVENUES.

(a) Permit Fee. Permittee shall pay to City a "Permit Fee" in the amount specified in Section 1.1 above. The Permit Fee shall be due and upon the execution of this Permit. The Permit Fee is payable in lieu of the daily stall fees specified in Section 9A.7 of the San Francisco Administrative Code.

(b) Security Deposit. At the time of execution of this Permit, Permittee shall deposit with City the sum specified in Section 1.1 as a security deposit (the "Security Deposit") to secure Permittee's faithful performance of all terms and conditions of this Permit, including, without limitation, its obligation to surrender the Permit Area in the condition required by this Permit at the conclusion of each Market day. The amount of the Security Deposit shall not limit Permittee's obligations under this Permit. Permittee agrees that City may (but shall not be required to) apply the Security Deposit in whole or in part to remedy any damage to the Permit Area caused by Permittee, its Agents or Invitees, or any failure of Permittee to perform any other terms, covenants or conditions contained herein (including, but not limited to, the payment of City's reimbursable expenses as described in this Permit), without waiving any of City's other rights and remedies hereunder or at law or in equity and without any obligation. The amount of the Security Deposit shall in no way limit the liabilities of Permittee under any provision of this Permit.

(c) Permittee to Reimburse City for Costs. Permittee shall reimburse City for all costs reasonably incurred by City in connection with the operation of the Market, and such costs may include, without limitation, utility costs and any special costs incurred by the San Francisco Police Department, Department of Parking and Traffic, and the San Francisco Fire Department. Any operational costs shall also be the sole responsibility of Permittee.

(d) Form of Payment. Payments shall be made by wire transfer or good check payable to the City and County of San Francisco and delivered to:

Revenue Unit
The Recreation and Park Department
McLaren Lodge - Annex, 2nd Floor
501 Stanyan Street
San Francisco, CA 94117

(e) Late Payment. If Permittee fails to pay the Permit Fee or any other payment required under this Permit on or before the due date, Permittee shall pay City a late payment charge of Two Hundred and Fifty Dollars (\$250) in each instance. The late payment charge has been agreed upon by City and Permittee as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Permittee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount. Fees not paid when due shall bear interest from the date due until paid at 1% per month.

7. TERM OF PERMIT.

(a) Effective Date; Term. This Permit shall be effective as of the date upon which this Permit is signed by the authorized representatives of City and Permittee, following approval by the General Manager. The privilege given to Permittee pursuant to this Permit is temporary only, and shall

commence and expire on the respective commencement and expiration dates set forth in Section 1.1., subject to City's revocation right set forth in Section 2.

(b) Termination. Notwithstanding anything to the contrary in this Permit, City shall have the right to terminate this Permit (1) if Permittee fails to comply with any of the terms or conditions of this Permit and cure such non-compliance within three (3) days after written notice by City (or in the case of Permittee's failure to comply with any non-monetary obligation that cannot be cured within such period, in the event Permittee does not commence cure within such period and does not diligently pursue such cure to completion, but in no event later than 30 days following notice), or (2) if City determines that there is an emergency requiring termination, then City may terminate this Permit effective immediately upon delivery of written notice to Permittee. Upon any expiration or early termination of this Permit, Permittee shall immediately surrender the Permit Area in the condition required hereunder.

6. INSURANCE. Permittee shall procure and keep in effect at all times during the term of this Permit, at Permittee's expense insurance as follows:

- (a) General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$5,000,000 aggregate, Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Broadform Property Damage, Products Liability and Completed Operations;
- (b) Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and
- (c) Workers' Compensation Insurance in amounts as required by law, if applicable, with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident if Worker's Compensation Insurance is required hereunder.
- (d) Such additional or other insurance as may be required by City's Risk Manager within fourteen (14) days of a written request from City for such insurance.

All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

Prior to the commencement date of this Permit, Permittee shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder. Insurance certificates shall clearly indicate the location of the Permit Area to which they apply. If Permittee shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Permittee, and the cost thereof shall be paid to City within five (5) days after delivery to Permittee of bills therefor.

Should any of the required insurance be provided under a claims made form, Permittee shall maintain such coverage continuously throughout the term of this Permit and, without lapse, for a period of three (3) years beyond the Permit expiration, to the effect that, should any occurrences during the Permit term give rise to claims made after expiration of the Permit, such claims shall be covered by such claims-made policies.

Permittee's compliance with the provisions of this Section shall in no way relieve or decrease Permittee's indemnification obligations under this Permit or any of Permittee's other obligations

hereunder. Notwithstanding anything to the contrary in this Permit, at City's election this Permit shall terminate immediately, without notice to Permittee, upon the lapse of any required insurance coverage. Permittee shall be responsible, at its expense, for separately insuring Permittee's personal property.

9. COMPLIANCE WITH LAWS; NOTICE OF VIOLATION. Permittee shall, at its expense, conduct and cause to be conducted all activities on the Permit Area allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity (including, without limitation, the Americans with Disabilities Act), whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties, including, without limitation, to the extent applicable, the requirements of Chapter 9A of the San Francisco Administrative Code. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all business and other licenses or approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that City is entering into this Permit in its capacity as a property owner with a proprietary interest in the Permit Area and not as a regulatory agency with police powers. Nothing herein shall limit in any way Permittee's obligation to obtain any required regulatory approvals from City departments, boards or commissions or other governmental regulatory authorities or limit in any way City's exercise of its police powers. Permittee shall deliver to City, promptly after receipt, a copy of any notice which Permittee may receive from time to time: (i) from any governmental authority having responsibility for the enforcement of any applicable laws, asserting that the Market is in violation of such laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Permittee hereunder, asserting that the requirements of such insurance policy or policies are not being met.

10. COVENANT TO MAINTAIN PERMIT AREA. In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly condition, so far as the Permit Area may be affected by Permittee's activities hereunder. Permittee shall be responsible for cleaning the Permit Area and any improvements thereon, if applicable, in accordance with the provisions of Section 3(c) above, and shall steam clean the Permit Area on an as-needed basis as requested by the Department. Without limiting the foregoing, Permittee shall be responsible for cleaning any restroom on the Permit Area as required throughout the day on Market Days.

11. REPAIR OF DAMAGE. Permittee shall be responsible for any and all damage to the Permit Area resulting from the Market. The toilets and sinks on the Permit Area shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein. The expense of any breakage, stoppage or damage resulting in any violation of this rule shall be borne by Permittee. Permittee shall be billed for the direct cost of repairs or replacement for any and all damage to the Permit Area resulting from the Market, including staff time. Permittee shall pay for all documented damage within thirty (30) days of receipt of the invoice.

12. WAIVER OF CLAIMS AND CONSEQUENTIAL AND INCIDENTAL DAMAGES.

a. Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its Agents, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Permit Area or its use by Permittee.

b. Permittee acknowledges that it will not be a displaced person at the time this Permit is terminated or revoked or expires by its own terms, and, without limiting any indemnification rights of Permittee contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

c. Permittee expressly acknowledges and agrees that the fees payable hereunder do not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the facilities or Permittee's uses hereunder. Accordingly, without limiting any indemnification obligations of Permittee or other waivers contained in this Permit and as a material part of the consideration for this Permit, Permittee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue City for such damages, including, without limitation, any interference with uses conducted by Permittee pursuant to this Permit, regardless of the cause, and whether or not due to the negligence of City or its Agents, except for the gross negligence or willful misconduct of City or its Agents.

In connection with the foregoing releases, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

As a material part of the consideration for this Permit, Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Permit in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Permit.

13. UTILITIES AND SERVICES. City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Permit Area. Permittee has the sole responsibility to locate such utilities and protect them from damage. Permittee shall arrange for and pay the cost of garbage and recycling removal from the Permit Area at the close of each Market Day.

14. CITY'S RIGHT TO CURE DEFAULTS BY PERMITTEE. If Permittee fails to perform any of its obligations under this Permit to restore the Permit Area or repair damage, or if Permittee defaults in the performance of any of its other obligations under this Permit, then City may, at City's sole election, remedy such failure for Permittee's account and at Permittee's expense by providing Permittee with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Permit, and nothing herein shall imply any duty of City to do any act that Permittee is obligated to perform. Permittee shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Permittee's obligations under this Section shall survive the termination of this Permit.

15. NO COSTS TO CITY. Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

16. INDEMNITY. Permittee shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee, its officers, agents, employees, contractors or subcontractors (collectively, "Agents"), any Vendor or the Agent of any Vendor, or their respective invitees, guests or business visitors (collectively, "Invitees"), or third persons, relating in any manner to any use or activity under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms,

covenants or conditions of this Permit, (c) the use of the Permit Area or any activities conducted thereon by Permittee, Vendors, or their respective Agents or Invitees, (d) any release or discharge, or threatened release or discharge, of any Hazardous Material caused or allowed by Permittee, its Agents or Invitees, on, in, under or about the Permit Area, any improvements permitted thereon, or into the environment; except solely to the extent of Losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives, or (e) any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons, relating in any manner to any use or activity under this Permit. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Permit Area and claims for damages or decreases in the value of adjoining property. Permittee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Permittee by City and continues at all times thereafter. Permittee's obligations under this Section shall survive the expiration or other termination of this Permit.

17. "AS IS" CONDITION OF PERMIT AREA; DISCLAIMER OF REPRESENTATIONS.

Permittee accepts the Permit Area in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Permit Area or any facilities on the Permit Area for Permittee's use. Without limiting the foregoing, this Permit is made subject to all applicable laws, rules and ordinances governing the use of the Permit Area. It is Permittee's sole obligation to conduct an independent investigation of the Permit Area and all matters relating to its use of the Permit Area hereunder, including, without limitation, the suitability of the Permit Area for such uses.

18. NO ASSIGNMENT. This Permit is personal to Permittee and shall not be assigned, conveyed or otherwise transferred by Permittee under any circumstances. Any attempt to assign, convey or otherwise transfer this Permit shall be null and void and cause the immediate termination and revocation of this Permit.

19. PRIOR NOTICE REQUIRED FOR CESSATION OF USE. Permittee will not terminate its operation of the Market without prior written notice to City.

20. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION. This Permit does not create a partnership or joint venture between City and Permittee as to any activity conducted by Permittee on, in or relating to the Permit Area.

21. NOTICES. Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail, with a return receipt requested, or overnight courier, return receipt requested, with postage prepaid, addressed provided in Section 1.1. Notices herein shall be deemed given two (2) days after the date when it shall have been mailed if sent by first class, certified or overnight courier, or upon the date personal delivery is made.

22. SPECIAL CITY REQUIREMENTS.

(a) MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

(b) Non-Discrimination.

(i) Covenant Not to Discriminate. In the performance of this Permit, Permittee agrees not to discriminate against any employee of Permittee, any City employee working with Permittee, or applicant for employment with Permittee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) Subcontracts. Permittee shall include in all subcontracts relating to the Permit Area a non-discrimination clause applicable to such subcontractor in substantially the form of Section 22(b)(i) above. In addition, Permittee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Permittee's failure to comply with the obligations in this Subsection shall constitute a material breach of this Permit.

(iii) Non-Discrimination in Benefits. Permittee does not as of the date of this Permit and will not during the term of this Permit, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(iv) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the use of City property are incorporated in this Section by reference and made a part of this Permit as though fully set forth herein. Permittee shall comply fully with and be bound by all of the provisions that apply to this Permit under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Permittee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Permit may be assessed against Permittee and/or deducted from any payments due Permittee.

(c) Tropical Hardwoods and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. Permittee agrees that, except as permitted by the application of Sections 802(b) and 803(b), Permittee shall not use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Permit.

(d) Notification of Limitations on Contributions. Through its execution of this Permit, Permittee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual

serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Permittee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Permittee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Permittee's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Permittee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Permittee. Additionally, Permittee acknowledges that Permittee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Permittee further agrees to provide to City the names of each person, entity or committee described above.

(e) Possessory Interest Taxes. Permittee recognizes and understands that this Permit may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. In strict accordance with Section 6(c) of this Permit, Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

(f) Pesticide Prohibition. Permittee shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Permittee to submit to Recreation and Park Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Permittee may need to apply to the Permit Area during the term of this Permit, (b) describes the steps Permittee will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Permittee's primary IPM contact person with the City. In addition, Permittee shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

(g) Prohibition of Tobacco Sales and Advertising. Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Permit Area. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

(h) Conflicts of Interest. Through its execution of this Permit, Permittee acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Permittee becomes aware of any such fact during the term of this Permit, Permittee shall immediately notify the City.

(i) Food Service Waste Reduction. Permittee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Permit as though fully set forth herein. This provision is a material term of this Permit. By entering into this Permit, Permittee agrees that if it breaches this provision, City will suffer actual damages that will be

impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Permittee agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Permit was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Permittee's failure to comply with this provision.

(j) Sunshine Ordinance. Licensee understands and agrees that the City's Sunshine Ordinance (Section 67.24(e) of the San Francisco Administrative Code) and the State Public Records Law (Government Code Section 6250 et seq.), apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided that is covered by this Section will be made available to the public upon request.

23. GENERAL PROVISIONS.

- (a) This Permit may be amended or modified only by a writing signed by City and Permittee.
- (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver.
- (c) All approvals and determinations of City requested, required or permitted hereunder may be made in the sole and absolute discretion of the General Manager or other authorized City official.
- (d) This Permit (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein.
- (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit.
- (f) Time is of the essence.
- (g) This Permit shall be governed by California law and the City's Charter.
- (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees of City shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience.
- (i) If Permittee consists of more than one person then the obligations of each person shall be joint and several.
- (j) Permittee may not record this Permit or any memorandum hereof.
- (k) Subject to the prohibition against assignments or other transfers by Permittee hereunder, this Permit shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns.
- (l) In the event City sells or otherwise conveys the property burdened by this Permit this Permit shall automatically be revoked.
- (m) Permittee represents and warrants the following: (i) that Permittee is a California corporation duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California; and (ii) this Permit and all documents executed by Permittee which are to be delivered pursuant to the Permit will be duly authorized, and executed and are, or will be, legal, valid and binding on, and enforceable against Permittee in accordance with their respective terms.

[No further text this page.]

Permittee represents and warrants to City that it has read and understands the contents of this Permit and agrees to comply with and be bound by all of its provisions.

CITY:
CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

PERMITTEE:
NOE VALLEY FARMERS' MARKET,
a California corporation

By: _____
Dana Ketcham
Manager Permits and Reservations
San Francisco Recreation and Park Department

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By _____
Deputy City Attorney

Exhibit A

Permit Area (with Seating Area depicted)

Exhibit B

SPECIAL RULES AND REGULATIONS

Without limiting Permittee's obligations under the terms and conditions of the Permit, Permittee agrees as follows:

1. All set ups must consider safety for site impaired users to avoid tripping hazards. Permittee and Vendors shall not install any tents or other structures or use any equipment in a manner that would block any ADA walkways or paths without ensuring that alternative routes are available and marked. All cords must be protected with proper ADA-approved cable covers.
2. All structures are to be freestanding. NO STAKING ALLOWED.
3. Anchor bolts are NOT to be drilled into the concrete, asphalt or lawn areas.
4. Tent anchors (sandbags or water barrels) are to be marked so as to be highly visible to the public and made for easy maneuvering of the sight impaired and wheelchairs.
5. Structures, decorations, equipment, etc. may NOT be attached to San Francisco Recreation and Park Property (i.e.: garbage cans, benches, trees, etc.).
6. Vehicles are restricted to paved surfaces. Permittee will be held liable for any damage caused by vehicles to lawns, sprinkler systems, paved surfaces (including any specialty pavers) and/or structures
7. ..

Exhibit C

GENERAL PARK RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

Exhibit D

VENDOR WAIVER AND RELEASE

In consideration for being granted permission to operate a stall at the farmers' market on property owned by the City and County of San Francisco, I, the undersigned ("Vendor"), agree that the City and County of San Francisco, and any and all of its officers, directors, agents and employees (collectively, the "Released Parties"), shall not be responsible or liable to Vendor for and, to the fullest extent allowed by law, Vendor hereby waives all rights against the Released Parties and releases them from, any and all claims, demands, losses, liabilities, damages, costs, liens, injuries, penalties, fines, lawsuits or other proceedings, including, but not limited to, incidental or consequential damages and attorneys' fees, relating to any injury, accident or death of any person, or loss or damage to any property (collectively, "Losses"), arising out of or in any way relating to such operations or my entry onto or use of City-owned property. I understand that the City and County of San Francisco makes no representations or warranties, express or implied, regarding the property on which the stall operations will occur and I agree to enter the property at my sole risk.

In executing this Waiver and Release, I have not relied on any representations or warranties as to the safety of the stall or the market operations or the condition of the property on which the market is located.

"VENDOR"

Print Name: _____

Date: _____

Exhibit E

APPROVED MARKET RULES AND REGULATIONS AND VENDOR AGREEMENT

[Attached]

Noe Valley Farmers' Market

RULES & REGULATIONS/VENDOR AGREEMENT 2013

Effective date: July 1, 2013

The Noe Valley Farmers' Market (NVFM) is located at 3861 24th Street between Sanchez & Vicksburg Streets in San Francisco. The Market is open year-round on Saturdays, 8 a.m.-1 p.m.

1. Stalls are available on a reserved basis only. Sellers who appear without a reservation, or after 7:45 a.m., will be turned away.
2. Load-in time is 7-7:45 a.m.; load-out time is 1-1:30 p.m. Sellers must be off the lot by 2:00 p.m. – no later. The Market Manager has discretionary power to collect a fine of \$50 from any vendor who sets up their stall prior to 6:30 a.m., fails to arrive by 7:45 a.m., and/or fails to be off the lot by 2:00 p.m.
3. No sales, trades or other transactions are permitted outside the hours during which the Market is open for business: 8:00 a.m. until 1:00 p.m. Vendors found selling to customers prior to 8:00 a.m. or after 1:00 p.m. are subject to a \$50 fine, payable immediately, at the discretion of the Market Manager. Vendors who are unable to pay the fine immediately must pay the fine prior to being allowed on the lot the following week. Vendors will not be allowed to operate at the Market until the fine is paid.
4. The NVFM Market Manager will assign stall spaces. Seller must accept the space assigned by the Market Manager. Vehicles may be parked behind the stall, as directed by the Market Manager and as availability permits. A parking surcharge of \$10 will be charged for each vehicle parked on the lot. If there is no room to park your vehicle on the lot, you will be directed by the Market Manager to off-load and park on the street. There is no guarantee of parking, regardless of any precedent or expectation.
5. Stalls measuring 10 ft. by 10 ft. are available for \$40. Double-sized stalls are available for \$70, triple-sized for \$90. No percentage of seller's gross will be collected. The Market Manager will collect stall fees between approximately 9:30 a.m. and 11:30 p.m. (cash or check made out to Noe Valley Farmers' Market).
6. If a seller is unable to sell on any given Saturday, the seller must call and leave a message for the market manager (**at 415.248-1332**) at least **24 hours in advance**. Failure to do so will result in regular stall fee payment the following Saturday. If you're having a problem arriving **Saturday morning**, or will be

Noe Valley Farmers' Market

RULES & REGULATIONS/VENDOR AGREEMENT 2013

late, please call the market manager, Elizabeth Crane, on her cell phone at **415.244-4042**.

7. Sellers must provide their own tables, canopies, and other set-up needs. Sellers must maintain clean stalls. Each seller must remove their garbage and containers. Sellers may not use City & County of San Francisco public bins. Failure to clean the stall area to the satisfaction of the market manager will result in a fine of \$50 (collected at the discretion of the market manager). Sellers are encouraged to display price signage and advertising within their stalls.
8. All items sold by agricultural vendors at the NVFM must have been grown or cultivated upon California land, which the seller controls. The producer must sell items to NVFM attendees without an involved third party. NVFM reserves right to limit items sold, based on permits, commodity variety, and consumer demand.
9. All sellers must adhere to California laws regarding sales permitted under their certification. A copy of the current California certification must be available at the seller's stall, and only items listed on this certification may be sold by the seller. This certificate must be produced for review upon demand of the Market Manager. If a seller is unable to produce this certificate, the Market Manager can prohibit the seller from conducting business at the market.
10. All sellers' scales must bear the current 2013 weights and measures seal.
11. All sellers must meet all relevant requirements stipulated by the State of California Health and Safety Codes, including but not limited to those related to protecting food from contamination (Section 113980) and to certified farmers markets (Sections 114370, 114371 and 114373).
12. All sellers must display any and all required permits, including but not limited to: California Agriculture Certified Producers Certificate, Department of Public Health permits, Business Registration Certificate, Workers Compensation (if applicable).
13. All sellers must maintain a General Liability Insurance policy with minimum coverage of \$500,000. The Noe Valley Farmers Market and the City and County of San Francisco and their respective officers, agents and employees must be listed on this policy as "additional insured" parties. A copy of this insurance must be provided to the Noe Valley Farmers Market.
14. All sellers must maintain automobile insurance for each and any vehicle used to deliver or remove items from the Noe Valley Farmers Market. A copy of this policy must be contained in the vehicle(s).
15. All sellers must behave in a professional and courteous manner.

Noe Valley Farmers' Market

RULES & REGULATIONS/VENDOR AGREEMENT 2013

16. NVFM has the right to suspend or revoke a seller's privileges if seller does not abide by the NVFM Rules & Regulations agreed to. NVFM has the right to enter seller's stall for reasonable inspection determining seller's compliance to NVFM Rules & Regulations. NVFM has the right to change, without notice, the Market Rules and Regulations as it deems necessary.
17. The agreement between the seller and the NVFM must be reviewed on an annual basis by both parties. This review will occur each January, regardless of which month a seller begins an association with the NVFM. Copies of any permits, insurance certificates or other required documents (see sections 9, 12, 13, and 14) that are renewed in months other than January must be provided to the NVFM by the seller upon renewal or update or replacement of the previous document.

Noe Valley Farmers' Market

RULES & REGULATIONS/VENDOR AGREEMENT 2013

Producer/Business Name: _____

Name of owner or principal officer: _____

Mailing address: _____

Phone number: _____

Email address: _____

Website address: _____

Other markets at which you sell: _____

Please list items you plan to sell: _____

County Health Department permit number(s) for point of production: _____

(please attach copies of permit[s]): _____

San Francisco Health Department permit number for selling location : _____

(please attach copy of permit) _____

Agricultural Seller Permit number (if applicable): _____

(please attach copy of permit) _____

California Processed Food Registration number(if applicable): _____

(please attach copy) _____

General Liability Insurance Policy Provider & policy number: _____

Automobile Insurance Provider & policy number: _____

Noe Valley Farmers' Market

RULES & REGULATIONS/VENDOR AGREEMENT 2013

I have read the Noe Valley Farmers Market Rules and Regulations, and I agree to abide by them as amended, pay the weekly stall fees and cooperate fully with Market Managers. By signing this document I attest that I am a representative of the business entity named above, and am fully authorized to act on its behalf:

Seller Signature _____ Date _____

Printed name: _____

Noe Valley Farmers Market Approval Date _____

RECREATION & PARK COMMISSION

RESOLUTION NO. _____

RESOLUTION APPROVING, UNDER PARK CODE SECTION 7.21, A PERMIT TO THE NOE VALLEY FARMERS' MARKET FOR THE OPERATION OF A WEEKLY FARMERS' MARKET AT THE FUTURE PARK SITE AT 3861 24TH STREET, SUBJECT TO THE BOARD OF SUPERVISORS' APPROVAL OF PENDING LEGISLATION TO ACQUIRE THE SITE.

WHEREAS, The Noe Valley Ministry currently owns real property in the City and County of San Francisco ("City") located at 3861 24th Street (Assessors Block 6509 / Lot 040) ("the Property"), consisting of an asphalt-paved lot measuring 10,829 square feet; and

WHEREAS, The Noe Valley Ministry wishes to sell the Property to the City so that it may remain as public open space; and

WHEREAS, At its meeting of April 18, 2013, the Recreation and Park Commission (Commission) voted to recommend that the Board of Supervisors approve the acquisition of the Property so that it may be operated as public open space by the Recreation and Park Department ("RPD"); and

WHEREAS, At its meeting of May 22, 2013, the Budget and Finance Committee of the Board of Supervisors forwarded the proposed acquisition of the Property to the full Board with a positive recommendation; and

WHEREAS, The full Board of Supervisors is scheduled to vote on the proposed acquisition of the Property at its meeting of June 4, 2013; and

WHEREAS, The Noe Valley Farmers' Market is an incorporated 501(c)(4) organization that has operated a farmers' market at the Property on a weekly basis on Saturdays since December 2003; and

WHEREAS, The Noe Valley Farmers' Market and the Recreation and Park Department desire to continue the weekly operation of the market on Saturdays from 8am to 1pm if the City acquires the Property; and

WHEREAS, Under Park Code Section 7.21, the Commission may approve the location of a farmers' market on park property upon findings that such a use: (1) Is appropriate for the crowd capacity of the particular location; (2) Does not adversely affect park grounds or facilities beyond the regular usage of the particular location; and (3) Does not significantly interfere with the public's use and enjoyment of other areas of the park, including, but not limited to, children's play areas or athletic courts or fields; and

WHEREAS, The farmers' market has operated at the Property for nearly ten years without incident, currently hosts about 22 vendors' tents, and attracts on average about 2,100 visitors over the course of the market day, and under the proposed permit, the market would continue to operate at its current capacity; and

WHEREAS, Under the terms of the proposed permit, the Noe Valley Farmers' Market will be required to (1) clean the site, remove all trash and compost generated, and leave the Property in the same condition as it was found; and (2) keep the site in good, clean, safe, secure, sanitary and sightly condition; and (3) be responsible for any damages caused to the site by the market's operations, and (4) submit a security deposit, which requirements are designed to ensure that the market will not adversely affect the grounds or its facilities beyond the regular usage of the site; and

WHEREAS; The Property currently consists of an asphalt-paved lot with landscaping around the perimeter, and a small public seating area in the northeast corner with benches, trees, and landscaping; and currently does not have any children's play areas or athletic courts or fields and therefore the proposed market will not interfere with the public's use of such areas; and the market will operate only one day a week from 8am-1pm, and during market days, the entire site, including the public seating area, will be accessible to all members of the general public; and

WHEREAS, On April 10, 2013, the San Francisco Planning Department issued a Categorical Exemption pursuant to the California Environmental Quality Act (CEQA) for the City's purchase of the 3861 24th Street property, its use as a public open space, and the continued weekly operation of the Noe Valley Farmers' Market;

Now therefore, be it

RESOLVED, In accordance with Park Code Section 7.21, the Commission finds based on the recitals set forth above, that the proposed operation of the Noe Valley Farmers' Market at the Property (1) Is appropriate for the crowd capacity of the particular location; (2) Does not adversely affect park grounds or facilities beyond the regular usage of the particular location; and (3) Does not significantly interfere with the public's use and enjoyment of other areas of the park, including, but not limited to, children's play areas or athletic courts or fields; and be it

FURTHER RESOLVED, The Commission approves the issuance of a six-month permit to the Noe Valley Farmers' Market, in substantially the same form as the permit attached to the staff report dated June 6, 2013, for operation of a weekly Saturday farmers' market at the Property, subject to the Board of Supervisors' approval of pending legislation to acquire the Property; and be it

FURTHER RESOLVED, The Commission authorizes RPD staff to renew the permit for the Noe Valley Farmers' Market for additional six-month periods on

substantially the same terms and conditions as set forth in the permit attached to the staff report dated June 6, 2013 if the General Manager or his or her designee determines that (1) the permittee has complied with all of its obligations under the permit, and (2) the operation of the market continues to (a) be appropriate for the crowd capacity of the location, (b) not adversely affect park grounds or facilities beyond the regular usage of the location, and (c) not significantly interfere with the public's use and enjoyment of other areas of the park, including but not limited to children's play areas or athletic courts or fields.

I hereby certify that the foregoing Resolution was ADOPTED by the Recreation and Park Commission at the meeting on June _____, 2013.

Date: _____

Secretary, Recreation and Park Commission

AYES:

NAYS:

ABSENT:

ADOPTED: