



**LICENSE AGREEMENT FOR USE OF CREEKSIDE PARK NORTH PARKING LOT
BY AND BETWEEN THE CITY OF CUPERTINO AND
PACIFIC COAST FARMER'S MARKET ASSOCIATION**

This License Agreement ("Agreement") is made by and between the CITY OF CUPERTINO, a municipal corporation ("Licensor"), and PACIFIC COAST FARMER'S MARKET ASSOCIATION ("Licensee") and is effective on the last date signed below.

RECITALS:

WHEREAS, Licensor is the owner of and controls the north public parking lot at Creekside Park in the City of Cupertino, California, (hereinafter referred to as the "Property").

WHEREAS, In 2017, Licensee obtained a special use permit from Licensor to operate a weekly certified farmer's market ("Market") on the Property, and has operated the Market on the Property since that time.

WHEREAS, Licensee seeks to maintain the ability to enter upon the Property, more particularly described in the attached **Exhibit A**, by way of a license for the purposes specified in Section 1 below and in the attached **Exhibit B**.

WHEREAS, Licensor has determined that the Market provides significant benefits to the Cupertino community by providing access to fresh and locally sourced produce and food items.

WHEREAS, Licensor desires to provide Licensee with access to and use of the Property, more particularly described in the attached **Exhibit A**, by way of a nonexclusive license, for the purposes specified in Section 1 below and in the attached **Exhibit B**, subject to the terms and limitations set forth herein.

NOW, THEREFORE, the Licensor and Licensee (collectively, the "Parties"), upon the mutual execution and delivery of this Agreement, for good and valuable consideration, including the Market's above-referenced public benefits, the sufficiency of which are hereby acknowledged, and in consideration of the covenants Parties express herein, agree as follows:

1. Use. Licensor hereby grants to Licensee and its agents and contractors, a nonexclusive, revocable license (the "License") to enter upon and use the Property, as identified in **Exhibit A**, subject to the terms and conditions herein, for the purpose of conducting a weekly certified farmer's market. The Market will be held every Friday from 7:00 a.m. to 2:30 p.m. Licensee agrees to carry out these uses as described in **Exhibit B** and in a manner compatible with the standard of care applicable to Licensee's profession. This grant of License shall not confer any property right to Licensee.

2. **Term.** This License shall commence on the Effective Date and end on 6/24/2022 ("Term"), unless extended by separate written agreement approved by the City Manager or terminated as provided herein.
3. **Payment.** In consideration of the public benefits the Market provides, Licenser agrees to grant Licensee this License without changing a fee for use of the Property in compliance with this Agreement.
4. **Conditions Applicable to License.** This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the Property, whether or not of record. Licensee agrees to pay all costs incurred by Licenser in enforcing the terms of this License, including reasonable attorney's fees and costs. Failure to make such payments shall be grounds for revocation of this License.
5. **Repair and Restoration.** If Licensee, its agents or contractors cause any damage to the Property, or to any other of Licenser's property or improvements in connection with the exercise of this License, Licensee shall, at no cost to Licenser, repair and restore that property and/or improvements to its original condition prior to and as a condition of Licensee's ongoing use of the Property pursuant to this License.
6. **Assignment.** This License is personal to Licensee. Licensee may not substitute another or transfer any rights or obligations under this Agreement without prior written approval of Licenser.
7. **Termination of License.** Licenser may terminate this License for any reason, upon 30 days written notice.
8. **Indemnification.** To the fullest extent permitted by law, Licensee shall hold harmless, defend (with counsel agreed to by Licenser), and indemnify Licenser and its officers, officials, agents, employees, and volunteers (collectively and/or individually "Licenser") from and against any and all liability, claim, loss, damage, expense, costs (including, without limitation, costs, attorneys' fees, and expert fees of litigation) of every nature including but not limited to claims for loss or damage to any property, or for death or personal injury, arising out of, related to, or in connection with the License, or the failure of the same to comply with any of the obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of Licenser. Licensee's duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Licensee, including Licenser, are responsible for the claim does not relieve Licensee from its separate and distinct obligation to immediately defend Licenser as stated herein. This Section 8 shall survive termination of the Agreement.
9. **Insurance.** Licensee shall comply with the insurance requirements in **Exhibit C**. Licenser will not execute the Agreement until it has received and approved satisfactory certificates of insurance and endorsements evidencing the type, amount, and dates of coverage. Alternatively, Licenser in its sole discretion, may purchase insurance and deduct the costs from payments to Licenser, or terminate the Agreement.
10. **Authority.** Licenser is empowered to make adjustments to the Market operations described in **Exhibit B** to address any documented problems or nuisance situation that may occur. All grievances as a result of Licenser's decision may be appealed to the City Manager. The City Manager's decision may be appealed to the City Council under section 1.16.020 of the Cupertino Municipal Code.

11. Compliance with Laws. Licensee shall comply with any and all federal, state, and local laws, statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals and requirements, including those applicable to the use of the Property by Licensee and to any federal, State of California, or Santa Clara County Health Orders, or any other applicable emergency orders including City of Cupertino orders, related to the COVID-19 pandemic.

12. Effect. This Agreement, and each of its terms and conditions, shall inure to the benefit of, and be binding upon the heirs, successors, executors, and assigns of the Parties.

13. Construction. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this License or in any way affect this License. The use of singular shall be deemed to include the plural and, conversely, the plural shall be deemed to include the singular.

14. Governing Law, Venue, and Dispute Resolution. This Agreement is governed by the laws of the State of California. Any legal actions or proceedings filed against Licensors in connection with this Agreement must comply with the government claims filing requirements and must be filed with the Superior Court for the County of Santa Clara, State of California. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

15. Severability. Any provision of this License that shall prove to be invalid, void or illegal in no way affects, impairs or invalidates any other provisions hereof, and all other provisions shall remain in full force and effect.

16. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice that may arise between the Parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Licensors to insist upon the performance by Licensee in accordance with said terms.

17. Attorney Fees. If Licensors is required to pursue litigation, arbitration or other administrative or regulatory proceeding to enforce its rights or the terms of this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs. This Section 17 survives this Agreement.

18. Entire Agreement/Modifications. This Agreement and all referenced Exhibits are hereby attached and incorporated into the Agreement by this reference and represent the full and complete understanding as to those matters contained herein, and supersede any other agreement or understanding, either oral or written, between the Parties, including the *Exclusive Use Permit – Creekside Park* executed by Pacific Coast Farmers Market Association on 9/16/20. This Agreement may not be modified or amended except in writing signed by both Parties. If there is any inconsistency between any term, clause, or provision of the main Agreement and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Agreement shall prevail and be controlling.

19. Survival. All provisions which by their nature must continue after the Agreement ends, including without limitation Indemnification, Insurance, Governing Law, and Attorney Fees, will survive the expiration or termination of this Agreement.

20. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

To City of Cupertino: Office of the City Manager 10300 Torre Ave., Cupertino, CA 95014 Cc: Representative Name: Rachelle Sander Email: rachelles@cupertino.org	To Pacific Coast Farmer's Market Association: 5060 Commercial Circle, Suite A Concord, CA 94520 Cc: Allen Moy, Executive Director Email: allenmoy@pcfma.org
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or to such other address as either party may indicate in a written notice to the other. All notices and communications given under this Agreement shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit (for next day delivery) with Federal Express or other similar overnight courier system, or (iv) 24 hours after facsimile transmittal with confirmation of receipt and followed by personal delivery, United States mail, or overnight delivery as specified in this Section.

21. Execution. The person executing this Agreement on behalf of Licensee represents and warrants that Licensee has full right, power, and authority to execute this Agreement and to carry out all actions required. This Agreement constitutes a legally binding obligation of Licensee, and may be executed in counterparts, each one of which is deemed an original and all of which, taken together, constitute a single binding instrument. This Agreement may be executed by electronic signature, including digital signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

**LICENSEE, PACIFIC COAST
FARMER'S MARKET ASSOCIATION**

By _____

ALLEN MOY

Executive Director

Date _____

Tax I.D. No.:

LICENSOR, CITY OF CUPERTINO

A Municipal Corporation

By _____

DEBORAH FENG

City Manager

Date _____

APPROVED AS TO FORM:

HEATHER M. MINNER
Cupertino City Attorney

ATTEST:

KIRSTEN SQUARCIA
City Clerk
Date _____

1325167.3

Exhibit A - Site Plan

Weekside Farmers Market - 10455 Miller Ave. Cupertino Ca. 95014

Fridays, 8:30AM to 1:00PM, Year-round



- Cones
- Trash cans
- Ag booth
- Non Ag booth
- No Pets
- No pets / animals or smoking

EXHIBIT B

CONDITIONS OF USE

The LICENSEE will operate a weekly, Friday farmers market subject to the following conditions of use:

1. SITE PLAN.

- 1.1. The site plan attached to the Agreement as **Exhibit A** indicates the approved locations and number of all equipment, food and vendor booths, tents and canopies, waste and recycle containers, vendor parking spaces, event attendee parking spaces, signage, and traffic ingress and egress from the lot.
- 1.2. There will be no more than 63 stalls and 40 vans/trucks/commercial vehicles on site.
- 1.3. There will be no more than 40 producers operating at the Market.
- 1.4. Approximately 1,500 persons are expected to attend the Market each week.
- 1.5. All designated fire lanes shall be a minimum of 20 feet in width. Designated fire breaks between stalls shall be 10 feet in width.
- 1.6. Licensee shall be responsible to ensure that all extension cords shall be secured to prevent a tripping hazard.
- 1.7. If a material change to the initial approved layout is anticipated as a result of the addition of vendor booths, Licensee shall contact Parks and Recreation, Community Development, and Fire to ensure compliance with appropriate regulations at least 15 business days prior to the first event at which such changes are expected to be implemented. This change shall be reviewed and approved by Licensor.

2. SIGNAGE.

- 2.1. Licensee will post temporary signage as listed below:
 - 2.1.1. Licensee will place A-frame signs in the Market area of the Creekside north parking lot between 7:00 a.m. and 12:00 p.m. on Thursdays to notify patrons that public parking in that lot will not be allowed on Fridays 6:00 a.m. to 2:30 p.m., and that violators will be towed, but that public parking will continue to be available in the Creekside south parking lot.
 - 2.1.2. Licensee will place signage one hour prior to the Market opening on Fridays at and around the church parking lot at Creekside Bible Church, 10505 Miller Avenue directing customers to that parking.
 - 2.1.3. Licensee will place A-frame "No Farmer's Market parking" signs at entrances to 23-stall south parking lot one hour prior to the Market opening and leave them in place until the Market closes at 2:30 p.m.
- 2.2. All signage must comply with City Ordinance 19.104 with appropriate permits, unless the signs are placed on City Park property.

3. MARKET HOURS.

Licensee shall comply with the stipulations set forth below to minimize sound and traffic impacts:

- 3.1. Vendor arrival, load-in, and set-up shall begin no earlier than 7:00 a.m.
- 3.2. Market hours will begin no earlier than 8:30 a.m. and end no later than 1:00 p.m.
- 3.3. Load out, cleanup of litter and debris, and waste removal will be completed no later than 2:30 p.m.

4. MARKET ACTIVITIES.

- 4.1. Commercial food is permitted at the Market.
- 4.2. Alcohol sales at the Market are prohibited.

5. PARKING.

- 5.1. Licensee shall handle all traffic control in and around the Market site.
- 5.2. Licensee shall monitor parking on Market days with appropriate signage and provide staff/volunteers to direct parking.
- 5.3. Licensee is required to ensure the adjacent church parking lot is available for customer parking on all scheduled Market dates and hours.
- 5.4. Licensee must submit a copy of a signed parking agreement to the Licensor prior to execution of this Agreement.
- 5.5. Should the parking agreement be terminated by either Licensee or the church, the License shall be deemed null and void.
- 5.6. Licensee will ensure vendor loading/unloading and parking occurs only in designated areas.
- 5.7. The 23-stall Creekside south parking lot will remain designated for ADA parking, park users, and City activity participants.
- 5.8. Vehicles in violation of the parking restrictions will be towed away at owner's expense.
- 5.9. Licensee is responsible to contact City of Cupertino Code Enforcement to arrange towing, at 408-777-3182.

6. WASTE MANAGEMENT AND STORM WATER POLLUTION PREVENTION.

- 6.1. Licensee is responsible for litter clean up during and after the Market in the event area and on the adjacent south parking lot, playground, and landscape/turf areas of the park.
- 6.2. Any post-event clean up required to be conducted by the Licensor will result in staff time and material and/or equipment costs to be assessed to the Licensee.
- 6.3. Licensee shall be financially responsible for damages to any public property that may occur as a result of Market activities and attendance.
- 6.4. Licensee shall install and maintain two temporary waste stations for use by the event patrons. Waste stations consist of three Recology branded "event boxes" for landfill, recycling, and compostable. Event boxes shall be lined with clear plastic bags and serviced as needed during the event. Event boxes shall be obtained from Recology at Licensee's expense.
- 6.5. All waste generated during the Market shall be self-hauled and disposed off-site, by the Licensee.
- 6.6. Washing and/or rinsing of any product or equipment is prohibited unless the water is contained in appropriate dedicated gray water collection tanks. Collection tanks shall be emptied off-premises in accordance with all laws.
- 6.7. Licensee shall maintain an appropriately equipped spill kit including towels, absorbent, broom, and waste containers for dry method clean-up of any liquids or solids.
- 6.8. Distribution of single-use produce bags is discouraged, but permitted only for produce items.
- 6.9. Expanded polystyrene (EPS) foam food ware is prohibited from being distributed by any vendor.
- 6.10. Food vendors may not dispose of grease on site.
- 6.11. The public park restrooms must remain available to, and in acceptable condition for, park patrons during the days the event is held. Should Market attendees have a significant impact on the park restrooms, such that additional mid-day servicing is required, Licensee will bear the cost of this service (estimated at \$180 per day). If even with servicing, available public park restrooms are found to be inadequate to handle the volume of attendees, the Licensee may be required to provide portable toilets at its expense.

7. RESTRICTIONS ON USE OF PARK PROPERTY.

- 7.1. Licensee shall comply with the rules and regulations regarding the use of Park Property.

- 7.2. In compliance with City Municipal Code Section 10.48.052 Outdoor Public Events, this License allows amplified sound between 11:00am to 1:30pm, with a limit of 70 dBA (decibels) at the closest residential property and continuous or repeated peak noise levels must remain below 95 dBA where persons may be continuously exposed.
- 7.3. Licensee will adhere to the rules and regulations included in City Ordinance 13.04 Parks. Vendors are not allowed to drive a vehicle in the park or any landscaping within the parking lot for any purpose, including unloading of supplies and equipment. All unloading must be done in the parking lot or curbside.
- 7.4. Per City Ordinance 10.90.020, smoking is prohibited in City recreation areas, parks, and parking lots.
8. **CITY BOOTH.** Licensee shall grant Licensor one booth space free of charge, for the purpose of public education and outreach.
9. **ANIMALS PROHIBITED.** Signs shall be posted around the perimeter of and throughout the Market stating that animals are prohibited within the area of the Market, in accordance with the State of California Health and Safety Code. This prohibition shall not apply to service animals, as defined in the Americans with Disabilities Act, or to on-duty police dogs with handlers.
10. **SECURITY.** Licensee may be required to provide on-site security if deemed required by the Licensor.
11. **EVALUATION AND REPORTING**
 - 11.1. Licensee will meet with Assistant Director of Parks and Recreation or designated staff as requested to evaluate use and neighborhood, traffic, and/or park facilities impact.

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EXHIBIT C

Insurance Requirements

Licensee shall procure prior to commencement of Services and maintain for the duration of the contract, at its own cost and expense, the following insurance policies and coverage with companies doing business in California and acceptable to Licensor ("City").

INSURANCE POLICIES AND MINIMUMS REQUIRED

1. ***Commercial General Liability*** (CGL) for bodily injury, property damage, personal injury liability for premises operations, products and completed operations, contractual liability, and personal and advertising injury with limits no less than **\$2,000,000** per occurrence (ISO Form CG 00 01). If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO Form CG 25 03 or 25 04) or it shall be twice the required occurrence limit.
 - a. It shall be a requirement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be made available to the Additional Insured and shall be (i) the minimum coverage/limits specified in this agreement; or (ii) the broader coverage and maximum limits of coverage of any insurance policy, whichever is greater.
 - b. Additional Insured coverage under Licensee's policy shall be "primary and non-contributory," will not seek contribution from City's insurance/self-insurance, and shall be at least as broad as ISO Form CG 20 01 (04/13).
 - c. The limits of insurance required may be satisfied by a combination of primary and umbrella or excess insurance, provided each policy complies with the requirements set forth in this Contract. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect City as a named insured.
2. ***Automobile Liability***: ISO CA 00 01 covering any auto (including owned, hired, and non-owned autos) with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement auto insurance in an amount no less than the minimum required by State law. Licensee shall obtain certificates of insurance evidencing the required auto insurance as a condition to permitting vendors to participate in the Market.
 - b. Licensee's Employees and Agents. Any employee or agent of Licensee who in any way participates, monitors, organizes or performs as part of Licensee's obligations under this contract shall likewise maintain during the term of this Agreement auto insurance covering their autos in an amount no less than the minimum required by State law. Licensee shall require insurance certificates for this insurance as a condition of such persons participating in or performing under this Agreement.
3. ***Workers' Compensation***: As required by the State of California, with Statutory Limits and Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease.
Not required if Licensee has provided written verification of no employees.
 - a. Market Vendors and Agents. Licensee shall require all vendors and their agents to secure and maintain during the term of this Agreement Employer's Liability Insurance of no less than **\$1,000,000** per occurrence for bodily injury or disease. Licensee shall obtain certificates of insurance evidencing the required vehicle insurance as a condition to permitting vendors and their agents to participate in the Market.

OTHER INSURANCE PROVISIONS

The aforementioned insurance shall be endorsed and have all the following conditions and provisions:

Additional Insured Status

The City of Cupertino, its City Council, officers, officials, employees, agents, servants and volunteers ("Additional Insureds") are to be covered as additional insureds on Licensee's CGL and automobile liability policies. General Liability coverage can be provided in the form of an endorsement to Licensee's insurance (at least as broad as ISO Form CG 20 10 (11/ 85) or both CG 20 10 and CG 20 37 forms, if later editions are used).

Primary Coverage

Coverage afforded to City/Additional Insureds shall be primary insurance. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Licensee's insurance and shall not contribute to it.

Notice of Cancellation

Each insurance policy shall state that coverage shall not be canceled or allowed to expire, except with written notice to City 30 days in advance or 10 days in advance if due to non-payment of premiums.

Waiver of Subrogation

Licensee waives any right to subrogation against City/Additional Insureds for recovery of damages to the extent said losses are covered by the insurance policies required herein. Specifically, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Licensee, its employees, agents and subcontractors. This provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by the City. At City's option, either: the insurer must reduce or eliminate the deductible or self-insured retentions as respects the City/Additional Insureds; or Licensee must show proof of ability to pay losses and costs related investigations, claim administration and defense expenses. The policy shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the insured or the City.

Acceptability of Insurers

Insurers must be licensed to do business in California with an A.M. Best Rating of A-VII, or better.

Verification of Coverage

Licensee must furnish acceptable insurance certificates and mandatory endorsements (or copies of the policies effecting the coverage required by this Contract), and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements prior to commencement of the Contract. City retains the right to demand verification of compliance at any time during the Contract term.

Subcontractors

Licensee shall require and verify that all subcontractors maintain insurance that meet the requirements of this Agreement, including naming the City as an additional insured on Contractors insurance policies.

Higher Insurance Limits

If Licensee maintains broader coverage and/or higher limits than the minimums shown above, City shall be entitled to coverage for the higher insurance limits maintained by Licensee.

Adequacy of Coverage

City reserves the right to modify these insurance requirements/coverage based on the nature of the risk, prior experience, insurer or other special circumstances, with not less than ninety (90) days prior written notice.