



# TOWN OF FAIRFAX

## STAFF REPORT

### February 2, 2022

**TO:** Mayor and Town Council

**FROM:** Michele Gardner, Town Clerk

**SUBJECT:** Approve Agricultural Community Events Farmers Market right of entry agreement to continue to operate a Farmers Market in Bolinas Park in 2022 and 2023

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#### **RECOMMENDATION**

Approve the right of entry agreement with Agricultural Community Events Farmers Market to continue to operate a Farmers Market in Bolinas Park.

#### **DISCUSSION**

Agricultural Community Events Farmers Market (ACEFM) has operated the Wednesday Farmers Market in Bolinas Park since 2013, when the Council selected it as operator. ACEFM would like to continue operating the Farmers Market in Fairfax. In 2016, the Council approved modifying the Right of Entry agreement to cover two years rather than one. Attached is another two-year agreement to cover 2022 and 2023, with the modifications discussed below.

The Farmers' Market will run every Wednesday from 4pm to 8pm, from the first Wednesday in May through the second Wednesday in October. This year, that would be May 4<sup>th</sup> through October 12<sup>th</sup>.

#### **FISCAL IMPACT**

The Town receives \$2,675 from ACEFM per year for any required Town fees and permits to operate a Farmers Market in Bolinas Park.

#### **ATTACHMENT**

Right of Entry Agreement

## Draft RIGHT OF ENTRY AGREEMENT

This Right of Entry Agreement (this “Right of Entry”) is entered into as of \_\_\_\_\_, 2022 (the “Effective Date”) by and between the Agricultural Community Events Farmers Market, a non-profit corporation (GRANTEE) and the Town of Fairfax, a municipal corporation (GRANTOR).

### RECITALS

A. The GRANTOR is the owner of the real property located at Bolinas Park, Fairfax, California and described more particularly on Exhibit A hereto (the “Property”).

B. GRANTEE wishes to use the Property for a Community Farmers Market, (the “Project”), and wishes to obtain permission from GRANTOR to enter upon the Property for the Project, all as more particularly described below.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties have agreed as follows:

### AGREEMENT

1. Grant of Right of Entry: The GRANTOR hereby grants the GRANTEE, its employees, grantees, contractors, agents, and designees, permission to enter upon the Property shown on Exhibit A for the purposes of operating the Project. The Project is the operation of a Farmers’ Market with various craft and food vendors along with a certified farmers’ market component. Exhibit B contains the restrictions and requirements of the Project. No other use of the Property shall be permitted.
2. Assumption of Risk: GRANTEE enters the property for the Project and purposes as referred to above, at its own risk and subject to whatever hazards or conditions may exist on said Property.
3. Termination: The term of this Right of Entry shall commence on the Effective Date and expire on the earlier of (i) GRANTOR’s delivery of written notice of termination to GRANTEE or (ii) September 27, 2023. However, the Grantor, in its sole discretion, may extend the termination date to October 18, 2023.
4. Duty to Repair, Restore, or Replace: Prior to termination of this Right of Entry, GRANTEE shall restore portions of the Property to its original condition except to the extent approved in writing by the GRANTOR. Restoration shall include the repair or replacement of any landscaping, structures, fences, driveways, or other improvements

that are removed, damaged, or destroyed by GRANTEE'S employees, contractors, subcontractors, agents, and designees.

5. Indemnification: GRANTEE shall indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees, contractors, subcontractors, agents, and affiliates from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors, or omissions, ultra-hazardous activities, activities giving rise to strict liability, or any person directly or indirectly employed by or acting as agent for GRANTEE in use of the Property pursuant to the rights under this Right of Entry.

6. Insurance: During the term of this Right of Entry, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability GRANTEE and its agents may have for worker's compensation.

GRANTEE and its contractors and subcontractors shall each obtain at their sole cost and keep in full force and effect during the term of this Right of Entry, commercial general liability insurance in the amount of \$2 million per occurrence for bodily injury, personal injury and property damage; provided (i) that the GRANTOR, its officers, agents, employees, and volunteers shall be added as additional insureds under the policy, and (ii) that the policy shall stipulate that this insurance will operate as primary insurance; (iii) that no other insurance effected by the GRANTOR or other named insureds will be called upon to cover a loss covered thereunder.

(a) Such insurance shall provide that no cancellation, major changes in coverage, expiration, or renewal will be made during the term of this Right of Entry, without thirty (30) days written notice to GRANTOR prior to the effective date of such cancellation or change in coverage.

(b) Prior to entering the Property, GRANTEE shall file with GRANTOR a Certificate of Insurance form showing that the insurance required by this Right of Entry has been obtained.

7. Recording: Neither GRANTOR nor GRANTEE shall record this Right of Entry.

8. Attorney's Fees: If any legal action or proceeding arising out of or relating to this Right of Entry is brought by either party, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

9. Notices: All notices required or permitted under the terms of this Right of Entry shall be in writing and sent to:

Town of Fairfax  
Attn: Town Manager  
142 Bolinas Rd.  
Fairfax, Ca 94930  
Phone# (415) 453-1584  
Fax # (415) 453-1618

Kelly Smith  
ACEFM  
PO BOX 113  
Kenwood, CA 95452  
Phone# (415) 999-5635

10. Time is of the Essence; Entire Agreement: Time is of the essence of each of the terms and provisions of this Right of Entry. This Right of Entry constitutes the entire agreement between GRANTEE and GRANTOR, and no alteration, amendment or any part thereof shall be affective unless in writing signed by parties sought to be charged or bound thereby.

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

**GRANTOR:**  
**TOWN OF FAIRFAX,** a municipal corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**GRANTEE:**  
\_\_\_\_\_ ,

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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**EXHIBIT A**

The property is known as Bolinas Park in Fairfax, California.

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## EXHIBIT B

### **RESTRICTIONS AND REQUIREMENTS**

- The GRANTEE shall operate a Community Farmers Market (Market) with a Certified Farmers Market component per the GRANTEE's proposal (on file with the Town) in Bolinas Park on Wednesday evenings from approximately 4:00 pm to 8:00 pm or at a mutually acceptable time.
- In the year 2022, the Market shall be open on May 4, 2022 and close October 12, 2022. The Grantee may operate at a different location in Town after the closing date provided the Grantee acquires all required permits from the Town.
- In the year 2023, the Market shall be open on May 3, 2023 and close October 18, 2023. The Grantee may operate at a different location in Town after the closing date provided the Grantee acquires all required permits from the Town.
- The Market will have approximately 25 local farmers, food purveyors, and artisans participate on a weekly basis.
- Alcohol sales shall also be allowed by a single company, provided a minimum of 10% of gross proceeds are donated to a nonprofit organization(s). The ancillary sale of alcohol by farmers shall be allowed. GRANTEE shall place signage in the market as well as require the vendors selling alcohol to have signage in their booths indicating that no alcohol shall be consumed on the premises. GRANTEE will provide space to outreach organizations working on alcoholism or alcohol abuse messaging.
- Live music shall be allowed at the Market, provided, however, it is limited to groups without drums and with minimal amplification.
- Bolinas Park is the area provided for the Market. Access must be maintained for Town Hall staff, Fairfax Police, and Public Works vehicles on Winnie Lane at all times. The GRANTEE and GRANTOR shall agree on the location of vendor and customer parking prior to May 1<sup>st</sup>. The GRANTOR will allow vendors or others to park in the red zone along Bolinas Road as well as along Winnie Lane and Elsie Lane in designated locations. The Contractor may post ½ hour parking signs along Bolinas Road in front of Bolinas Park, but the GRANTOR will not enforce such restriction. GRANTOR employees will be asked to move their vehicles prior to the event.
- The GRANTEE shall pay the GRANTOR \$2,675 for the fees and permits related to operating the Market in Bolinas Park for the stated period in each calendar year. The GRANTEE shall make payments in six installments:
  - a. \$475 due June 1, 2022
  - b. \$1,100 due August 1, 2022
  - c. \$1,100 due September 1, 2022
  - d. \$475 due June 1, 2023
  - e. \$1,100 due August 1, 2023

f. \$1,100 due September 1, 2023

- GRANTEE shall post all no parking by 2:30pm on Tuesday prior to the Wednesday Market.
- GRANTEE shall provide and maintain a portable restroom for Market employees for the duration of the event.
- GRANTEE shall comply with all applicable California Codes, Regulations, Certified Farmers Market rules, and Fairfax Town Code including the Plastic Bag Reduction Ordinance which requires the Market to be plastic bag free. GRANTEE will continue to monitor vendors to ensure that they are not using plastic bags for sales. GRANTEE will have paper bags available for vendors in the event they do not bring their own. GRANTEE may request a waiver from the GRANTOR to use plastic bags for certain food products such as meat, fish, and poultry.
- GRANTEE shall obtain any required State, County and GRANTOR permits to operate a Certified Farmers Market and maintain a valid GRANTOR business license.
- GRANTEE shall provide additional trash, recycling, and food waste receptacles for the market. The GRANTOR will empty the permanent receptacles prior to the Market each week, but the GRANTEE must empty the receptacles at the end of each evening. GRANTEE may use the Public Works dumpsters and/or recycling and compost bins at the end of each evening to dispose of food, recycling, and paper trash. The GRANTEE shall make a good faith effort to ensure that food waste and recycling materials are not disposed of in the trash dumpster, but rather separated into the appropriate compost and/or recycling bins.
- GRANTEE shall make a good faith effort to provide reusable foodware for food purchased for consumption at the Market.
- GRANTEE is required to make a good faith effort to keep generators for the Market as far away from Town Hall as possible to minimize noise impacts.
- Vendors and entertainers must be located on “non-turf” areas. Booths can be set up in the Redwood Grove with at least two feet of non-turf frontage. Whenever possible, vehicles must not be parked on the turf.
- GRANTEE will have staff onsite during Farmers Market hours to ensure safety and compliance of all certified farmers market codes and regulations. A Market Manager or Assistant Manager must be on site when the Market is in operation. The GRANTEE shall provide GRANTOR with a cell number by which the Market Manager or Assistant Manager in attendance can be reached during the event.
- Fire hazards are to be avoided. Vendors cannot use hot kettles or other devices that leave scorch or burn marks in the terrain or otherwise would destroy the turf, without prior approval of the Town Manager.
- The GRANTEE will be responsible for compensating the GRANTOR for repairs or other damage to the Park or adjacent right of way. The GRANTOR will discuss such repairs or damages with the GRANTEE prior to requesting compensation.



- The Market must provide its own signage (A-frame signs).
- GRANTEE is responsible for posting no parking signs and blocking off the street for the farmers market. GRANTEE will comply with all regulatory rules and regulations from governing agencies.
- GRANTEE will be responsible for signing up vendors, collecting any vendor fees.
- GRANTEE will have all vendors leave their space as it was before the market started and will have staff members clean up vendors that do not pick up.
- GRANTEE will create and maintain a Facebook page for Fairfax Community Farmers Market.
- GRANTEE will create a logo and identity for the Market.

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