

EXHIBIT B

Conditions for an Encroachment in the Public Right-Of-Way

Address 18th St. between Peralta St. and Campbell St.

Parcel no. N/A

Permittee Local Roots D/B/A Foragers Market

Permit no. ENMI

Description

1. The permit for an encroachment in the public right-of-way shall be revocable at any time and for any reason, at the sole discretion of the City Council, expressed by resolution, or may be suspended at any time, at the sole discretion of the City Engineer, upon failure of Foragers Market (“Permittee”) to comply fully and continuously with each and all of the conditions set forth herein.
2. Permittee and its selected farmers' market vendors and their successors and assigns hereby disclaim any right, title, or interest in or to any portion of the public right-of-way, including the sidewalk and street, and agrees that the encroachment is granted for an indeterminate period of time and that the use and occupancy by Permittee of the public right-of-way is temporary and does not constitute an abandonment, whether expressed or implied, by the City of Oakland of any of its rights associated with the statutory and customary purpose and use of and operations in the public right-of-way.
3. Permittee shall maintain fully in force and effect, at its own expense, at all times during the period for which the permit is in effect, good and sufficient public liability insurance in the amount not less than \$2,000,000.00 for each occurrence, and property damage insurance in a face amount not less than \$1,000,000.00 for each occurrence, both including contractual liability, insuring the City of Oakland, its officers, agents, employees, and volunteers against any and all claims arising out of the existence of the encroachment in the public right-of-way, as respects liabilities assumed under this permit. The policy shall contain an endorsement declaring the policy as primary coverage on said liabilities. Permittee shall submit a written certificate of such insurance or copy of the policy to the City Engineer showing that insurance is in effect in compliance with this section, and shall file subsequent notices of the renewal thereof with the City Engineer. Such certificate shall state that the insurance coverage shall not be canceled, amended or be permitted to lapse without thirty (30) days' prior written notice to the City Engineer. Permittee also agrees that the City Engineer, at his or her sole discretion, may review the type and amount of insurance required of Permittee annually and may require Permittee to increase the amount of and/or change the type of insurance coverage required as circumstances warrant.
4. Permittee shall, and by the acceptance of this revocable permit agrees and promises to indemnify, defend, save and hold harmless the City of Oakland, its elected officials, officers, agents, employees, representatives, assigns and volunteers, to the maximum extent permitted by law, from any and all suits, claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs) (collectively referred to as

"claims"), whether direct or indirect, known or unknown, foreseen or unforeseen, brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property arising out of or caused by the existence, installation, maintenance, use or occupancy of the encroachment in the public right-of way, regardless of actual or alleged responsibility for negligence, and Permittee's liability insurance shall cover this contractual liability.

5. Permittee shall be solely and fully liable and responsible for any protective devices, repairs, or replacement of any public infrastructure improvements constructed or installed in the public right-of-way, whether by cause, neglect, or negligence of Permittee or others, and for the associated direct and indirect costs and expenses the City may incur to cure the failure of or damage to public infrastructure improvements resulting directly or indirectly from the operation of the farmers' market, to the extent that the failure or damage becomes or creates a nuisance or hazard to the safety of the public, and shall not allow the encroachment to become a blight or a menace or a hazard to the health and safety of the general public.
6. Permittee shall make no changes to the use of the public right-of-way or to its infrastructure improvements including, but not limited to, pavement and landscaping, electrical systems and lighting, structures and buildings, refuse containers, utility lines, irrigation and storm drainage systems, fire hydrants, dimensions, signage and striping, and traffic control devices without the written consent of the City Engineer and shall agree that the City may impose fees and considerations for processing permits required for any proposed changes and shall further agree that the City is not obligated to grant any changes that may be proposed.
7. Permittee shall in all cases begin the installation of its encroachment in the public right-of-way not sooner than and shall complete the removal of its encroachment from and the clean-up of the public right-of-way not later than the time interval set forth above for operation of the farmers' market.
8. Permittee shall provide and continuously maintain, within the encroachment and the general area surrounding it, suitable methods and mechanisms approved by the City Engineer that assure the interception, removal, and proper disposal of all litter, trash, debris, accumulations and deposits of food products, containers, and fats/grease/oils, markings, graffiti, petroleum-based motor fuels, oils, and grease associated with and attributable to the activities of the farmers' market and other materials deleterious to public health and safety and to the primary use of the public right-of-way and its appurtenances and the environment.
9. Permittee shall provide and continuously maintain methods and mechanisms approved by the City Engineer for handicapped accessibility as required by the most current edition of the California Building Code and local amendments.
10. Upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of an exigent circumstance, Permittee shall postpone or immediately terminate

its activities for the day and expeditiously remove its encroachment from the public right-of-way and complete its clean-up of the premises.

11. Upon determination by the Chief of Police, Fire Marshal, or City Engineer, or their designees, of a violation of the terms and conditions of this encroachment permit, Permittee shall immediately abate the violation or terminate its activities for the day and expeditiously remove its encroachment from the public right-of-way and complete its clean-up of the premises.
12. The location and limits of the encroachment, as delineated in Exhibit A, are subject to the review and approval of and subsequent adjustment by the Chief of Police, Fire Marshal, or the City Engineer individually or together.
13. Permittee shall obtain and maintain current all other permits and fully conform with all conditions required for operation of a farmers' market, including, but not limited to those required by the City of Oakland Finance and Management Agency, Oakland Fire Department, Public Works, Alameda County Department of Environmental Health, California Department of Food and Agriculture, California Franchise Tax Board, California Department of Consumer Affairs, and the California Department of Occupational Health and Safety prior to commencing the installation of the encroachment.
14. Permittee acknowledges that the City of Oakland makes no representations or warranties as to the conditions beneath the area of encroachment. Foragers Market hereby waives and fully releases and forever discharges the City and its officers, directors, employees, agents, servants, representatives, assigns and successors from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition of the right of way.
15. Permittee further acknowledges that it understands and agrees that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." Permittee recognizes that by waiving the provisions of this section, permittee will not be able to make any claims for damages that may exist, and to which, if known, would materially affect its decision to agree to these encroachment terms and conditions, regardless of whether permittee's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
16. (a) Permittee, by the acceptance of this revocable permit, agrees and promises to indemnify, defend, and hold harmless the City of Oakland, its officers, agents, and employees, to the maximum extent permitted by law, from any and all claims, demands,

liabilities damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs; collectively referred to as "claims", whether direct or indirect, known or unknown, foreseen or unforeseen, to the extent that such claims were either (1) caused by the permittee, its agents, employees, contractors or representatives, or, (2) in the case of environmental contamination, the claim is a result of environmental contamination that emanates or emanated from the encroachment area, or was otherwise caused by the permittee, its agents, employees, contractors or representatives.

(b) If any contamination is discovered below or in the immediate vicinity of the encroachment, and the contaminants found are of the type used, housed, stored, processed or sold on or from the encroachment area, such shall amount to a rebuttable presumption that the contamination below, or in the immediate vicinity of, the encroachment was caused by the Permittee, its agents, employees, contractors or representatives.

(c) Permittee shall comply with all applicable federal, state, county and local laws, rules, and regulations governing the installation, maintenance, operation and abatement of the encroachment.

17. Permittee shall be solely responsible for the proper coordination with all neighborhood businesses, service providers, and private vendors participating in the farmers' market and for the proper coordination with all City forces, public utilities, contractors, and workmen operating in the public right-of-way during the duration of the encroachment and for the safety of itself and any of its personnel.
18. As a condition of the issuance and continued validity of this conditional and revocable permit, the type, variety, content, volume, display, and exchange of products, goods, wares, and services and the accounting for associated monetary transactions by Permittee shall be subject to review, audit, and approval by the Chief of Police, the Comptroller, the Fire Marshal, the City Engineer, the Alameda County Department of Environmental Health, California Department of Food and Agriculture, California Franchise Tax Board, California Department of Consumer Affairs, and the California Department of Occupational Health and Safety.
19. As a condition of the issuance and continued validity of this conditional and revocable permit, Permittee shall pay all fees as determined by the Chief of Police, the Fire Marshal, the Public Works Agency, and the City Engineer and required by the Oakland Municipal Code and the Master Fee Schedule.
20. The City, at its sole discretion and at future date not yet determined, may impose additional and continuing fees as prescribed in the Master Fee Schedule for use and occupancy of the public right-of-way.
21. Permittee shall continuously maintain the general area within and surrounding the encroachment and the adjoining public right-of-way free of litter, trash, debris, accumulations and deposits of food-based products, substances, containers, and

fats/grease/oils, and petroleum-based motor fuel, oils, and grease associated with and attributable to the activities of the farmers' market.

22. Permittee shall provide, maintain, and remove supplemental portable toilet and hand washing facilities within the encroachment area for use by the public patrons and private vendors of the farmers' market to the satisfaction of the Alameda County Department of Environmental Health and the City Engineer.
23. This Indenture Agreement alone does not allow work to be done which requires permitting and/or inspection. Permittee to obtain any and all required permits before beginning work. The Chief of Police, the Fire Marshal, and the City Engineer are authorized to issue companion permits for the operation of the farmers' market and to condition said permits with requirements that further clarify and refine the conditions as set forth herein.
24. Upon revocation of this encroachment permit, Permittee shall immediately, completely, and permanently remove the encroachment from the public right-of-way and restore the public right-of-way to its original conditions existing before the construction or installation of the encroachment, to the satisfaction of the City Engineer and all at the sole expense of the Permittee.