

## AMENDMENT NO. 1

### **El Mercado Popular Farmers Market Agreement [No. 2013-27]**

This Amendment No. 1 (“Amendment”) to the underlying El Mercado Popular Farmers Market Agreement (“Agreement”) is made and entered into between El Mercado Popular, Inc. (“El Mercado Popular”) and the 14<sup>th</sup> District Agricultural Association *aka* Santa Cruz County Fair, an entity of the State (“14<sup>th</sup> DAA”) in Watsonville, California. For convenience herein, the “Parties” refers to El Mercado Popular and the 14<sup>th</sup> DAA.

#### **Recitals**

- A. **Whereas**, on February 3, 2013, El Mercado Popular and the 14<sup>th</sup> DAA entered into Agreement No. 2013-27 (“Agreement”) which provides for El Mercado Popular to manage, maintain, operate, and conduct a Farmers Market/swap meet under certain terms and conditions on the premises of the 14<sup>th</sup> DAA. The Agreement was entered into pursuant to RFP No. 2012-04 (“RFP”) which stated, in relevant part, that the premises consists of approximately 12 acres and that the 14<sup>th</sup> DAA, in Part VII of the RFP, will consider expanding the operation of the outdoor market to Fridays and Saturdays, when appropriate.
- B. **Whereas**, commencing in February 2013 and continuing to the date of this Amendment, El Mercado has operated its Farmers Market on Sundays only on the premises of the 14<sup>th</sup> DAA.
- C. **Whereas**, in March 2015, El Mercado Popular, in accordance with the RFP, informed the 14<sup>th</sup> DAA that it desired to expand its hours of operation to include Saturdays and, depending on the success of its expanded operations, to include Fridays as well.
- D. **Whereas**, in response thereto, the 14<sup>th</sup> DAA notified El Mercado Popular that it is will allow the expanded operation of the Market Place/swap meet to include Saturdays and Fridays provided that El Mercado make certain capital improvements, to include constructing new restroom facilities, relocating the carnival lot perimeter fence, paving repairs, and other improvements at a potential cost of approximately \$200,000.
- E. **Whereas**, to effectuate the foregoing expanded operation of the Market Place/swap meet, the Parties acknowledge and agree that the underlying Agreement will need to be amended.

**Now, therefore**, the Parties agree to amend the Agreement as follows:

1. Effective Date: The effective date of Amendment No. 1 is May 1, 2015.
2. Purpose of Amendment: The Parties acknowledge and agree that the purpose of this Amendment is to allow for the operation of Market Place/swap meet to expand (“Expanded Operations”) initially on Saturdays, commencing in 2015, and thereafter, depending on the relative success of the Saturday operation, then potentially to Fridays at some future point during the term of this Agreement, or any extension thereof. The Parties further acknowledge and agree that the Expanded Operations contemplated by this Amendment will require capital improvements to the 14<sup>th</sup> DAA facilities, such as relocating the Carnival Lot Fence, constructing new permanent restroom facilities, and asphalt paving for parking.

3. Sunday Market Place Operations: The Sunday Market Place/swap meet operations will continue to be physically set up and operated in the same manner and under the same terms and conditions as previously agreed to under the terms of the Agreement (this includes use of the Main Parking Lot, Carnival Lot, Crosetti restrooms, and the Harvest Building and restrooms) except for the following changes:
  - a. The 14<sup>th</sup> DAA will continue to print and track the tickets that are used but El Mercado Popular agrees to reimburse the 14th DAA for all ticket printing costs on any day the Market Place/swap meet is operated.
  - b. El Mercado Popular agrees that its employees will clean and service all restroom facilities, at its expense, that are utilized by the Market Place/swap meet, commencing on the effective date of this Amendment.
  - c. The 14th DAA agrees to provide assistance to El Mercado Popular with the training and supervision of its employees, provided that El Mercado Popular agrees to hold the 14<sup>th</sup> DAA harmless and will assume full responsibility for the actions and conduct of its representatives, agents, and employees.
  - d. El Mercado Popular agrees that it will fully reimburse the 14th DAA for paper goods & cleaning supplies on a monthly basis.
4. Expanded Operations-Saturday (Friday) Market Place Operations: Saturday (Friday) Market Place/swap meet operations will be set up and operate in the "Main Parking Lot" outside of the fenced Carnival Lot and will not occupy the Carnival Lot or any of the buildings and their connected restroom facilities. However, prior to commencement of the Expanded Operations, the Parties acknowledge and agree that certain capital improvements must be completed as specifically set forth in Paragraph 5 herein.
5. Capital Improvements: In exchange for the 14<sup>th</sup> DAA's consent to the Expanded Operations, El Mercado Popular, at its sole expense, agrees to plan and construct, with the District's consent, the capital improvements set forth in set forth in subparagraphs a, b, and c. Further, El Mercado Popular agrees that the legal title and possession to all facility improvements will immediately vest in the 14th DAA upon satisfactory completion of each project. Further, El Mercado Popular agrees that the construction of all capital improvements will be managed and supervised by the Santa Cruz County Fair Heritage Foundation.
  - a. Carnival Lot Perimeter Fence: El Mercado Popular will remove approximately 915' of existing chain link fence. Further, El Mercado Popular will install approximately 690' of new 6' tall + 3 strand barb wire chain link fence as per 14<sup>th</sup> DAA specifications. The existing materials, including top rails, gates, and fabric, may be reused provided the finished new fence "looks to be in like new condition that is acceptable to the 14<sup>th</sup> DAA". New fence posts will be required. Old fence posts will be cut off at ground level and plugged with concrete grout. El Mercado Popular acknowledges and agrees that this capital improvement-carnival lot perimeter fence-must be completed prior to the commencement of any Expanded Operations.

b. New Restroom Facility: El Mercado Popular will design and construct a new restroom facility by utilizing the same or similar plans from the current race track restroom that was constructed on the premises of the 14<sup>th</sup> DAA in the year 2000. This new restroom facility shall be approximately 28' by 50' and must accommodate, at a minimum, twelve (12) women's stalls and twelve (12) men's stalls and related facilities. It is agreed by the Parties that the construction will commence as soon as the new Perimeter Fence, referred to in subparagraph a., is installed and that the target for completion of the restroom facility is December 31, 2015. El Mercado Popular further agrees that it will rent and pay for servicing portable restrooms while the new restroom building is under construction.

c. Asphalt Paving Repairs: The Parties agree to work together to install approximately 30,000 square feet of asphalt paving overlay no later than January 20, 2018. El Mercado Popular agrees, at its sole expense, to supply the materials and the 14<sup>th</sup> DAA will install the paving material with the 14<sup>th</sup> DAA's equipment and personnel. It is agreed by the Parties that the paving will be done in two phases. Phase 1 will take place during 2016 and will involve approximately 15,000 square feet of paving. Phase 2 will take place in 2017 to complete the 15,000 square feet of paving.

d. Indemnification: In undertaking the capital improvements and in addition to the indemnification contained in the Agreement, El Mercado Popular further agrees that it shall indemnify, hold harmless, and defend the 14<sup>th</sup> DAA and the State of California, its officers, agents, and employees against any and all claims, suits, actions of every name, kind and description, brought forth from, or on account of, damage to property or injuries to or death of any person, including but not limited to workers or the public, resulting from any activities associated with the capital improvements set forth in this Paragraph.

6. CEQA and Amplified Sound: The Parties acknowledge and agree that the Expanded Operations set forth in Paragraph 4 herein shall not commence until the requirements of the California Environmental Quality Act (CEQA) are satisfied.

a. Reimbursement of 14<sup>th</sup> DAA costs: El Mercado shall reimburse the 14<sup>th</sup> DAA for all costs associated with CEQA compliance.

b. Amplified Music-Sunday Only: The Parties acknowledge and agree that amplified music will only be allowed during Sunday Market Place operations inside the Harvest Building.

c. No Amplified Music-Expanded Operations: The Parties acknowledge and agree that no amplified music will be allowed during any Expanded Operations.

7. Rent:

a. Sunday Market Place Operations: The amount of rent and the terms of payment shall remain the same as set forth in Attachment B of the Agreement.

b. Expanded Operations-Saturday (Friday) Market Place Operations: Due to the uncertainty of the financial success of the Expanded Operations and in consideration for El Mercado Popular's financial commitment (approximately \$200,000) to the capital improvements set forth in Paragraph 5 herein, the amount of rent that El Mercado shall pay the 14<sup>th</sup> DAA derived solely from the Expanded Operations shall be based on the following graduated percentage of all gross income: 2015 - 10%; 2016 - 12.5%; and 2017 - 15%. Further, it is agreed by the Parties that the other terms of payment (e.g. timing of payment, etc.) for the Expanded Operations will be the same as those set forth in the Agreement for the Sunday Market Place Operations.

8. Five (5) year Option:

a. Deletion of Option Provision in the Agreement: It is agreed by the Parties that the five (5) year option set forth in Attachment B of the Agreement is deleted in its entirety and replaced as set forth in subparagraph b.

b. Option: The Parties acknowledge and agree that the Agreement contains a five (5) year option (Option) to extend the term of the Agreement. The Parties further agree that the Option is held jointly by El Mercado Popular and the 14<sup>th</sup> DAA. To exercise this Option, it is agreed that if El Mercado Popular desires to exercise the Option, then El Mercado Popular shall provide written notice to the 14<sup>th</sup> DAA a minimum of one (1) year prior to expiration of the initial term of the Agreement. After delivery and receipt of such notice, the Parties agree to negotiate in good faith to reach agreement on the terms and conditions for the five (5) year extension. In these negotiations, it is understood by the Parties that the satisfactory completion of the capital improvements set forth in Paragraph 5 herein shall be given strong consideration. Finally, in the event that the Parties fail to reach agreement on the terms for the Option extension prior to the final six months remaining before expiration of the Agreement, the Agreement will terminate on January 20, 2018.

9. Interpretation: In the event that there is a dispute concerning the proper interpretation of this Agreement, the Parties agree that the language and terms of this Amendment shall be given preference over the language and terms of the underlying Agreement.

10. Remaining Terms of Agreement in Effect: All other terms and conditions of the Agreement shall remain in full force and effect.

Dated: April \_\_\_\_\_, 2015

Dated: April \_\_\_\_\_, 2015

**14<sup>th</sup> District Agricultural Assn.**

**El Mercado Popular, Inc.**

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

Dave Kegebein  
General Manger/CEO

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

Patricia and Rosario Rodriguez  
Owners

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