

CITY OF SAN ANTONIO

Downtown Operations Department



**REQUEST FOR PROPOSAL
("RFP")**

for

**Operation of a Retail Establishment in
Farmer's Market Plaza**

Project Number: 2011-076

**Release Date: August 15, 2011
Proposals Due: September 23, 2011**

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I. BACKGROUND

The City of San Antonio (“City”) seeks proposals from qualified respondents interested in operating a retail establishment in Farmer’s Market Plaza located within Market Square at Stall S-11 in accordance with the requirements specified herein and including all provisions set forth in the accompanying documents. The City desires proposals that will provide the greatest benefit to the City of San Antonio and the visitors to Market Square. The selected respondent will enter into a Lease Agreement (“Agreement”) with the City.

Located in downtown San Antonio, Market Square is situated between the streets of Dolorosa, Santa Rosa, and Commerce with IH-35 serving as a western boundary. Market Square is a favorite gathering place, consisting of plazas, new and historically restored buildings, restaurants, the Museo Alameda, and parking areas. Market Square offers activities throughout the year.

Since 1840, the area has continued the town market concept offering a blend of merchandise and cuisine that represents the cultural, artistic, and ethnic influences of Texas and Mexico. Market Square includes Farmer’s Market Plaza building, El Mercado building, and outdoor plazas lined with restaurants and shops. Renovated in January 1994, the Farmer’s Market Plaza building, located at 612 W. Commerce Street, consists of a food court and a variety of shopping stalls.

Stall S-11, Farmers Market Plaza

Farmer’s Market Plaza Stall S-11 consists of approximately 114 square feet of space. The property is located near the center of the Farmers Market Plaza building.

Stall S-11 has a metal frame construction with one 10 foot wide overhead door and one 6 foot wide overhead door (both doors are approximately 9 feet tall). The interior includes slat walls, lighting, a wire grid ceiling, and wood parquet flooring. Lights work off of plug-in only, not from light switch.

Selected respondent will be required to pay monthly pro rata share for utilities, based on square footage. The selected respondent shall pay monthly garbage collection fee in the amount of \$2.85 (\$0.025 per square foot). The lease term shall be valid from date of City Council lease approval through June 30, 2014, with one option to extend for three years and a second option to extend for an additional two years.

Monthly rate for the stall shall be as follows:

Lease Year	Area (Sq. Ft.)	Total Monthly Rental Payment
Upon Award – 6/30/2013	114 sf	\$ 435.50
7/1/2013 – 6/30/2014	114 sf	Rental rate will be adjusted based on CPI Inflation Rate from May 2012 to May 2013

II. SCOPE OF SERVICES

The City intends to enter into Lease Agreement with selected respondent for use of the above described City-owned property located at 612 W. Commerce Street, San Antonio, Bexar County, Texas, within the area commonly known as the Farmer's Market Plaza at Market Square. Selected respondent shall agree that the Leased Premises be utilized for the sole purpose of retail sales in accordance with applicable statutes, laws, ordinances, rules and regulations of the United States, the State of Texas, and the City of San Antonio, Texas.

Selected respondent shall cooperate with the City in providing a high quality retail outlet to the visitors of Farmer's Market Plaza and maintain the merchandising concept of Farmer's Market Plaza, which is to "create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, Mexico, and Central and South America." The proposed retail establishment is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmer's Market tenants to the greatest extent possible.

No tenant or family member with a second degree of consanguinity or affinity may own or operate more than two (2) stores within the Market Square complex (Section 32-23B of the Municipal Code). Second (2nd) degree of consanguinity or affinity is defined in Chapter 573 of the Texas Government Code.

Selected respondent shall agree to maintain the following minimum hours of operation:

- a. During the months of September through May, open every day from 10:00 a.m. until 6:00 p.m.
- b. During the months of June through August, open each and every day from 10:00 a.m. until 8:00 p.m.
- c. Closed Thanksgiving Day, Christmas Day, New Year's Day, and Easter.

Hours of operation may be changed by the City during the lease term.

Selected respondent shall be required to execute a Lease Agreement, which will then be presented to City Council for approval. The lease term shall commence following City Council approval and City Manager's signature of Lease Agreement.

III. TERM OF CONTRACT

The lease term shall be valid from date of City Council lease approval through June 30, 2014, with one option to extend for three years and a second option to extend for an additional two years.

IV. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held in the Farmers Market Plaza building, located at 612 W. Commerce St., San Antonio, Texas at **8:30 a.m.**, local time, on **September 8, 2011**. Enter building from San Saba Street, which includes accessible entrance. Attendance at the Pre-Submittal Conference is optional, but strongly encouraged. Tour of the proposed Leased Space will immediately follow the conclusion of the Pre-Submittal Conference.

This meeting place is accessible to disabled persons. Parking is available on the second level parking lot, located above Farmers Market Plaza building at 612 W. Commerce, including accessible parking spaces. To arrange for special assistance to attend this meeting, please call the Disability Access Office at (210) 207-7243. Requests for an interpreter for the hearing impaired must be received at least two business days prior to the meeting by calling (210) 207-7245 V/TTY for assistance.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any, and posted to <http://epay.sanantonio.gov/RFPListings/>. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to submit their questions in writing to the City staff person identified in Restrictions on Communication, Section VIII.

V. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence:

Tab A.

GENERAL INFORMATION & REFERENCES FORM: Complete and submit RFP Attachment B, Parts 1 - 3.

Tab B.

DISCRETIONARY CONTRACTS DISCLOSURE: Complete, sign and submit Discretionary Contracts Disclosure Form. Access the form via the City's website at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf> Download form, complete all fields, click print button, sign form, and submit signed form with Proposal.

Tab C.

LITIGATION DISCLOSURE: Complete and submit RFP Attachment C, Litigation Disclosure Form. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form with the proposal.

Tab D.

FINANCIAL INFORMATION: Prepare and submit the following :

1. A copy of Respondent's three most recent financial statements or annual balance sheet/income statements, preferably prepared by independent Certified Public Accountant in accordance with generally accepted accounting principles. OR, submit a copy of a personal credit report from one of the three (3) major reporting agencies.
2. Financial documents may be placed in original proposal ONLY – additional copies not required.

Tab E.

PROOF OF INSURABILITY: Submit a letter from insurance provider stating provider's commitment to insure the Respondent for the types of coverages and at the levels specified in sample lease agreement.

Tab F.

SIGNATURE PAGE: Respondent must complete, sign and submit the Signature Page found in RFP Attachment D. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of the company or partner of the firm shall be accompanied by evidence of authority.

Tab G.

PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in RFP Attachment E.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for entering a lease agreement with the City of San Antonio. **FAILURE TO COMPLETE AND PROVIDE ANY OF THESE DOCUMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.**

VI. AMENDMENTS TO RFP

Changes, amendments, or written responses to questions received in compliance with Section VIII, Restrictions on Communication may be posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is respondent's responsibility to review this site and determine whether any amendments have been made prior to submission of a proposal. A respondent who does not have access to the Internet, must notify City in accordance with Section VIII, Restrictions on Communication, that respondent wishes to receive copies of changes, amendments, or written responses to questions by mail.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

VII. SUBMISSION OF PROPOSALS

A. Respondent shall submit one (1) original, signed in ink and five (5) copies of the Proposal, in a sealed package, clearly marked on the front of the package: **"Farmer's Market Plaza, Stall 11."** All Proposals must be received in the City Clerk's office no later than **4:00 p.m.**, local time, on **September 23, 2011** at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk's Office prior to the time and date set for submission of proposals. Any Proposal or modification received after this time shall not be considered.

Respondents should note that delivery to the P.O. box address in a timely manner does not guarantee its receipt in the City Clerk's office by the submission deadline. Therefore,

respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office
100 Military Plaza
2nd Floor, City Hall
San Antonio, Texas 78205

Proposals sent by fax will not be accepted.

- B. Proposal Format: Maximum number pages allowed shall be forty (40), excluding financial information. Each page shall be numbered. Electronic files, websites, or URLs shall not be included as part of the proposal; compact disks and/or computer disks submitted as part of the proposal shall not be considered. Each proposal must include the sections and attachments in the sequence listed in the Proposal Requirements Section, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal.
- C. Respondents who submit responses to this RFP shall correctly reveal, disclose, and state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the signature page of the Proposal.
- If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the signature page of its proposal, the City shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.
- D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information

Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.

- F. Any cost or expense incurred by the respondent that is associated with the preparation of the Proposal, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by respondent.

VIII. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with elected City officials and their staff regarding the RFP or proposals from the time the RFP has been released until the contract is posted as a City Council agenda item. Respondents are prohibited from communicating with City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or proposal submitted by respondents. Violation of this provision by respondent and/or their agent may lead to disqualification of respondent’s proposal from consideration. Exceptions to the restrictions on communication with City employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference.
2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed in the address below until **4:00 p.m.**, local time, on **September 9, 2011**. **Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by certified mail, return receipt requested, to:**

Mr. Chris Zaldivar
City of San Antonio, Downtown Operations Department
400 N St. Mary’s, Suite 100
San Antonio, TX 78205

However, electronic submissions by facsimile or e-mail will also be accepted at (210) 207-4276 or Chris.Zaldivar@sanantonio.gov

To allow ample time for distribution of answers and/or amendments to this RFP pursuant to the written questions submitted in accordance with this section, communication with the Staff Contact Person identified above is not permitted after the above stated deadline. Written questions received after the stated deadline will not be answered.

3. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City.

IX. EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the respondents for interviews. If the City elects to conduct interviews, respondents may be interviewed and re-scored based upon these same criteria, or other criteria to be determined by the selection committee. The City may also request additional information from respondents at any time prior to final approval of a selected respondent. The City reserves the right to select one, or more, or none of the respondents to provide services. Final approval of a selected respondent is subject to the action of the City of San Antonio City Council.

The City may assign scores based on the following evaluation criteria. This RFP is open to all proposers, including current tenants of Farmer's Market and Market Square. In the event that a current tenant of Farmer's Market or Market Square is selected as highest ranking responder and thereby leaves open their current leased space, the City reserves the right to award this newly vacant space to the next highest ranking responders in succession. There shall be no penalty to any respondent that declines to enter into a lease agreement for the space that is offered.

Evaluation criteria:

- A. Experience, Background, Qualifications (40%)
- B. Proposed Plan (60%)

X. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process. This RFP is open to all proposers, including current tenants of Farmer's Market and Market Square. In the event that a current tenant of Farmer's Market or Market Square is selected as highest ranking responder and thereby leaves open their current leased space, the City reserves the right to award this newly vacant space to the next highest ranking responders in succession.

- E. City will require the selected Respondent(s) to execute a lease prior to City Council award. No operation shall commence until City signs the contract document(s) and Respondent(s) provides the necessary evidence of insurance as required in this RFP and the lease. Lease documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a lease, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit City to enter into a lease, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a lease.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. The City reserves the right to deny a lease with any Respondent that has two (2) or more business interests in Market Square, or is related in the second (2nd) degree of consanguinity or affinity to a person or persons having business interests in Market Square where the sum total of all such business interests of Respondent and persons related to Respondent would exceed two (2) with the award of the lease under this RFP.
- I. Conflicts of Interests.
 - 1. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
 - 2. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at www.ethics.state.tx.us. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Please consult your own legal advisor if you have questions regarding the statute or form.

- J. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to operate under the lease, is (are) and shall be deemed to be an independent contractor(s), responsible for its (their) respective acts or omissions, and that City shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- K. Trademarks. The City shall have the right to make use of images of the facilities, other property, and personnel for advertising and other City purposes.
- L. City will neither consider nor accept any provisions submitted by Respondent in its proposal that: i) limit in any regard the amount or types of damages which may be sought and/or recovered by City from the selected Respondent in any litigation resulting from or related to the selected Respondent's actions under the Contract; ii) provide for venue for any litigation in any location other than the City of San Antonio, Bexar County, Texas; iii) provide for waiver of jury trial in any litigation; iv) require submission of any dispute(s) to binding arbitration; and/or v) require City to indemnify the selected Respondent, pay selected Respondent's court costs, collection costs, or attorney's fees.

RFP ATTACHMENT A

AREA MAP



RFP ATTACHMENT B
RESPONDENT QUESTIONNAIRE

RESPONDENT QUESTIONNAIRE, PART 1 OF 3

GENERAL INFORMATION

1. **Company Information:** Provide the following information regarding your company.

Name/Name of Agency/Company: _____

Address _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

2. **Contact Information:** List the person who the City may contact concerning your proposal or setting dates for meetings.

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Does your Company anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months that may affect the organization's ability to carry out its proposal?

Yes _____ No _____

4. Is your Company authorized and/or licensed to do business in Texas?

Yes _____ No _____

5. Where is the Company's corporate headquarters located? _____

6. **Local Operation:** Does the Company have an office located in San Antonio, Texas?

Yes _____ No _____

- a. If the answer to the previous question is "yes", how long has the Company conducted business from its San Antonio office?

Years _____ Months _____

- b. State the number of full-time employees at the San Antonio office. _____

7. **County Operation:** If the Company does not have a San Antonio office, does the Company have an office located in Bexar County, Texas?

Yes _____ No _____

a. If the answer to the previous question is yes, how long has the Company conducted business from its Bexar County office?

Years _____ Months _____

b. State the number of full-time employees at the Bexar County office. _____

8. **Debarment/Suspension Information:** Has the Company or any of its principals been debarred or suspended from contracting with any public entity?

Yes _____ No _____

If yes, identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

9. **Surety Information:** Have you or the Company ever had a bond or surety canceled or forfeited?

Yes _____ No _____

If yes, state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

10. **Bankruptcy Information:** Have you or the Company ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes _____ No _____

If yes, state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

11. Provide any other names under which your business has operated within the last 10 years.

REFERENCES - Provide three (3) references.

Reference No. 1:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____

Reference No. 2:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____

Reference No. 3:

Firm/Company Name: _____
Contact Name: _____ Title: _____
Address: _____
City: _____ State: _____ Zip Code: _____
Telephone No. _____ Fax No: _____
Email: _____

RESPONDENT QUESTIONNAIRE, PART 2 OF 3

EXPERIENCE, BACKGROUND, QUALIFICATIONS – Restate each question & provide responses.

1. Retail Experience. List and describe relevant business operations of similar size and scope. Include name of each business, location/address, type of merchandise sold and/or service(s) offered, length of time and reason(s) for leaving or closing business.
2. Business Interests. List businesses in Market Square owned by respondent, if any. List businesses in Market Square owned by respondent's relatives (identify business name, name of relative, and how relative is related to respondent).
3. Key Personnel. Describe experience of key personnel and their role in the proposed operation.
4. Resources. List any resources available to support the proposed business operation.
5. Additional Information. Identify any additional skills, experiences, qualifications, areas of uniqueness, and/or other relevant information you wish the City to consider in its selection.

RESPONDENT QUESTIONNAIRE, PART 3 OF 3

PROPOSED PLAN - Restate each question & provide responses.

1. Operating Plan.

- a. Identify Respondent's proposed investment in inventory, fixtures, & all support materials proposed for the lease space.
- b. List proposed items to be offered for sale & attach photos.
- c. Indicate points of uniqueness and identify proposed items for sale that will be different from existing Farmers Market retailers.
- d. Provide projected budget/revenue.

2. Management Plan.

- a. Will business owner staff store? If so, approximately how many hours per week?
- b. Identify key personnel and primary work assignments.
- c. Describe level of commitment and plan to ensure staff represents a clean and neat appearance at all times.

3. Marketing Plan.

- a. Describe proposed plan to market your business.
- b. Identify measures to maximize revenue, which may include local community outreach, advertising, patronage discounts and/or coupons offered to students, military personnel, senior citizens, City visitors and patrons of the San Antonio Convention & Visitors Bureau, etc.

4. Additional Information. Provide any additional plans and/or relevant information you wish the City to consider in its selection.

RFP ATTACHMENT C
LITIGATION DISCLOSURE FORM

LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

YES

NO

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFP ATTACHMENT D

SIGNATURE PAGE

SIGNATURE PAGE

Check (✓) the box that indicates business structure of Respondent

Individual or Proprietorship

Partnership or Joint Venture

Corporation

The undersigned certifies that (s)he is _____ (title) of the Respondent entity named below; that (s)he is designated to sign this Proposal Form (if a Corporation then by resolution with Certified Copy of resolution attached) for and on behalf of the entity named below, and that (s)he is authorized to execute same for and on behalf of and bind said entity to the terms and conditions provided for in the Proposal as required by this RFP, and has the requisite authority to execute an Agreement on behalf of Respondent, if awarded, and that the 11-digit Comptroller's Taxpayer Number for the entity is:

11-digit Comptroller's Taxpayer Number

Employer Identification Number

Respondent Organization Name (DBA also required if Individual or Proprietorship)

Signature: _____

Printed Name: _____

Title: _____

(If Respondent is a Joint Venture, an authorized signature from a representative of each party is required)

Signature: _____

Printed Name: _____

Title: _____

By signature above, Respondent agrees to the following:

1. If awarded a lease in response to this RFP, Respondent will be able and willing to execute a lease in the form shown in RFP Attachment F and comply with the insurance and indemnification requirements set out in the lease document.
2. If awarded a lease in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's Proposal and during Proposal process.
3. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
4. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
5. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.
6. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.

RFP ATTACHMENT E
PROPOSAL CHECKLIST

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Proposal	Document	Initial to Indicate Document is Attached to Proposal
	Table of Contents	
A	Respondent Questionnaire (RFP Attachment B)	
B	* Discretionary Contracts Disclosure (Access form at https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf)	
C	Litigation Disclosure (RFP Attachment C)	
D	Financial Information (Financial statements or credit report)	
E	Proof of Insurability (Letter from insurance provider)	
F	* Signature Page (RFP Attachment D)	
G	Proposal Checklist (RFP Attachment E)	
	One (1) Original and five (5) Copies of Proposal	

***Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

RFP ATTACHMENT F
SAMPLE LEASE AGREEMENT

**CITY OF SAN ANTONIO
FARMERS MARKET PLAZA LEASE AGREEMENT**

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation, acting herein through its City Manager, or her designated representative (hereinafter referred to as "**CITY**"),

AND

TBD (hereinafter referred to as "**TENANT**"), acting by and through its duly authorized officers, WITNESSETH:

Demise of Premises

CITY, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by TENANT, does hereby Lease and demise to TENANT, and TENANT does hereby rent and accept from CITY a portion of the real property and improvements owned by CITY located at 612 W. Commerce Street, San Antonio Bexar County, Texas, within the area commonly known as the Farmers Market Plaza at Market Square Plaza (said real property and improvements hereinafter referred to as the Leased Premises). Said Leased Premises contain approximately 114 square feet and is identified as Farmers Market Plaza area Stall S-11 in Exhibit A "Floor Plan" attached hereto and incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length.

Condition to Use: The CITY reserves the right to enter the Leased Premises at reasonable hours and, if in the opinion of the CITY, an emergency exists requiring immediate action, at any time, to inspect, to make replacements, repairs or restorations, and to carry out any work or activities in connection with the protection of the public health, safety and welfare, or the preservation of the Leased Premises. TENANT acknowledges the above reservation by CITY and agrees to respect and be subordinate to same. Reasonable notice shall be construed as giving notice the day before the CITY proposes to enter the Leased Premises, except for an emergency, which will not require prior notice.

USE AND CARE OF PREMISES

The Leased Premises shall be used only for the sale of the following retail items.

- TBD

TENANT understands and agrees that any violation of the above stated restrictions would be a material breach of this Agreement and that just compensation for the harm suffered by CITY that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation.

- The first violation shall result in a written notice from CITY
- For each of the next three violations **TENANTS** shall pay CITY \$50.00
- The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

The merchandising concept for this project is to create a blend of merchandise that is representative of the local culture, as well as the artistic and ethnic influences indigenous to Texas, the Southwest United States, and Mexico. The project is intended to enhance the Mexican market theme of Market Square and will avoid duplication of the products sold by the existing Farmers Market and/or El Mercado TENANTS to the extent possible.

Any change in the foregoing use(s) and purpose(s) in the Leased Space must be approved in advance and in writing by the CITY'S Market Square Facilities Coordinator; however, any such change of more than twenty-five percent (25%) in the items identified in 2.1 must be approved by the Director, Downtown Operations Department, or her designee. Any new use must also be approved by said Director, Downtown Operations Department, or her designee.

Any use by TENANT of the Leased Premises for purposes not shown above, or otherwise changed in writing as provided herein, will be deemed a breach of this Lease Agreement and will be grounds, at CITY'S option, for termination of this Agreement upon ten (5) days written notice to TENANT.

In using the Leased Premises for the purpose(s) hereinbefore described, TENANT may, with the written permission of CITY, demonstrate, exhibit or practice a specific art or craft on the Leased Premises related to TENANT'S approved retail purpose.

The following minimum hours of operation are hereby specifically agreed to by the parties hereto:

During the months of January, February, March, April, May, September, October, November, and December, TENANT agrees to open each and every day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 6:00 p.m.

During the months of June, July, and August, TENANT agrees to open business each day by 10:00 a.m. and agrees to operate and conduct business from the time of opening until 8:00 p.m., seven days a week. CITY shall post business hours on all major entry and exit points.

With the exceptions of Sections 2.7 and 2.8 below, failure to comply with above stated minimum operating hours shall result in a written warning on the first offense; a \$25.00 fine for the second offense; a \$50.00 fine for the third offense; and a \$500.00 fine for the fourth offense. The fifth offense shall be deemed as default and cause for lease termination as set forth in Article 18 "Defaults and Remedies".

SPECIAL SITUATIONS: CITY agrees that in special situations regarding weather conditions and/or extending hours of operation, CITY shall cooperate, to the best of its ability, with the Farmers Market Tenants based on their majority vote, as to temporary closings and/or extended hours of operation.

The preceding hours of operation shall not apply while the Farmers Market Plaza is closed for THANKSGIVING DAY, EASTER, CHRISTMAS DAY, and NEW YEAR'S DAY, or during such time as the Leased Premises become untenable because of casualty, repair or restoration.

TENANT may not close TENANT'S business under any circumstances, except where an emergency exists. TENANT must notify the Market Square Facilities Coordinator within 24 hours after closure to inform the Market Square Facilities Coordinator of the nature of the emergency.

Emergencies are defined as follows: A) Death in the **TENANT'S** or **TENANT'S** employee(s) family; B) Medical Emergency; C) Automobile Accident; and/or any other such occurrence, which may be deemed an Emergency by the Market Square Facilities Coordinator.

No TENANT may own, or operate as a "shop owner", more than two (2) stores in the Market Square Complex. The definition of "stores" includes, in-line stores, food court stalls, and store stalls. A TENANT may not have more than two of any combination of the above Farmers Market retail sites.

TERMS AND EXPIRATION DATE

Subject to earlier termination as hereinafter set forth, the term of this Lease is for a period beginning upon City Council approval and ending on June 30, 2014, unless it is sooner terminated under the provisions hereof. The Director of Downtown Operations shall have the authority to administratively extend the LEASE for an additional (36) month period and a subsequent (24) month period to June 30, 2019 with the agreement of the TENANT. The right is expressly reserved to the CITY, acting through City Council, to terminate this Agreement for the following:

In the event this Lease Agreement is deemed to be inconsistent with the best public use of the property, or

In the event the use of the Leased Premises shall have been deemed a nuisance by a court of competent jurisdiction, or

In the event **TENANT** shall default in the performance of any covenants of agreements contained herein and shall fail following thirty (30) days written notice of such default, to remedy same, save and except a ten (10) days' notice period will apply in the case of default in the payment of rent.

In the event of termination by City Council in relation to 3.1.1 or 3.1.2 above, CITY shall give TENANT notice in writing at least thirty (30) days prior to the termination date.

TENANT may cancel this Lease Agreement by giving thirty (30) days written notice to the CITY.

- 3.4 In the event City plans to change the use of Farmers Market and/or chooses to not renew Lease at the end of the Lease term, City shall provide six (6) months advance written notice of same to TENANT or the remaining months of the terms, whichever is greater.

ACCEPTANCE AND CONDITION OF PREMISES

TENANT has had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. TENANT'S taking possession of the Leased Premises shall be conclusive evidence of TENANT'S acceptance thereof in good order and satisfactory condition, and TENANT hereby accepts the Leased Premises in its present condition as suitable for the purpose for which it is leased. CITY specifically disclaims any warranty of suitability for TENANT'S intended commercial purposes.

TENANT agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by CITY or its agents to TENANT unless the same are contained herein or made a part hereof by specific reference herein.

RENTAL AND UTILITIES

RENTAL: In consideration of this Lease Agreement, TENANT agrees to pay to CITY at the office of the City Treasury, or at such other place as may be designated by the CITY in writing, monthly rental as follows:

Lease Year	Area (Sq. Ft.)	Total Monthly Rental Payment
Upon Award – 6/30/2013	114	\$435.50
July 1, 2013 – 6/30/2014	114	Rental rate will be adjusted based on CPI Inflation Rate from May 2012 to May 2013

Said monthly rental is payable in monthly increments on the first (1st) day of each month, being due in advance, starting upon City Council approval of lease and ending June 30, 2014 thereafter, unless otherwise extended. Such payments and amounts are subject to adjustments listed below.

In the event the CITY should determine that the Farmers Market Plaza Building would benefit from the opening of the arched windows on any street side of the building, the CITY has the right to calculate a higher rent for those shops having the benefit of direct access through these individual arched entrances. TENANT agrees to pay the higher rent or give CITY thirty (30) days notice that TENANT elects to, and will, vacate the Leased Premises prior to the rent increase.

GARBAGE FEES: In further consideration of this Lease Agreement, TENANT agrees to pay to the CITY at the office of the City Treasury or at such other place as may be designated by the CITY in writing, a monthly garbage collection fee in the amount equal to \$2.85 (\$0.025 per square foot X 114 square feet) due on the first day of each month, starting on Commencement Date of this Lease Agreement.

UTILITIES: In addition to consideration of rent, TENANT hereby agrees to pay a pro-rata share, based on square footage, for electricity, lighting, air conditioning and gas service provided by the CITY to the Leased Premises per month based on fifty percent (50%) of the total of the utility services. In cases where individual meters are installed, TENANT agrees to pay the entire cost of the utility services.

TENANT'S pro-rata share of utilities is based upon the square foot space that the TENANT leases from CITY. See example below:

Current City Public Service (CPS) bill for \$21,280 divided by 60,800 square feet (total square footage for Farmers Market), equals \$0.35 to cool or heat one square foot. Due to the amount of "Common Area" space within Farmers Market, only 50% of the CPS bill will be charged back to the TENANT.

Tenant Jones' shop contains 228 square feet; his portion of the above monthly CPS bill equals 228 X \$0.35 X .50 = \$39.90.

Rental, garbage, and utility fees specified in this Article 5 are to be paid promptly on the first day of each month by check or money order. All checks and money orders must be payable to the CITY OF SAN ANTONIO and payments should be made at the City Treasury. If rental payments are not received on or before the 10th day of the applicable calendar month, said payment shall be considered past due and

TENANT will be deemed delinquent and in default hereunder; a Twenty (\$20.00) Dollar late charge will be assessed on any payment received on the eleventh (11th) day of the applicable calendar month or any day thereafter. TENANT also agrees that any rental payment received after the thirtieth (30th) day of the respective month shall be due with interest charged at a rate of ten percent (10%) per annum. If TENANT accumulates three (3) past due notices in a twelve (12) month period, the TENANT will be in Default as specified in Article 18 and may be terminated without notification.

The ten (10) day period before the twenty (\$20.00) dollar late charge is applied should not be considered a "grace period"; nor shall the late charge provision be considered as an "option" for rental payments to be made late. All payments are considered late if not received in the City's Treasury office by the close of the business on the first (1st) day of each month.

At any time during the Lease term more than two (2) Insufficient Funds Checks are presented to the CITY in payment of rental or other considerations during a two (2) year calendar period, TENANT will be placed on a cash or money order basis for the following two (2) Lease years. No exceptions will be made. Since this type of action is the result of TENANT'S failure to comply with the terms of Article 5, a third (3rd) incident during the term of this Lease Agreement will be considered a default in the terms of the contract and termination action may be taken without notification.

At any such time should the CITY'S Department of Finance establish and issue uniform policies related to late payment of rent and/or Insufficient Funds Checks, which may be contrary to the terms stated in sections 5.5.1 – 5.5.2 above, the Department of Finance's policies shall prevail. CITY shall use its best efforts to formally notify TENANT of any such change(s) in advance.

Notwithstanding anything to the contrary set forth in this Lease, if TENANT shall fail to make the timely payment of any rent or any additional charges due CITY from TENANT or the payment of any other money due CITY from TENANT under the terms of this Lease, and any such failure shall be repeated two (2) times in any period of twelve (12) consecutive months, then notwithstanding that such failure shall have been cured within the period after notice, as provided in this Lease, any further similar failure within said twelve (12) month period shall be deemed to be a Repeated Event of Default.

In the event of a Repeated Event of Default, CITY, without giving TENANT any notice and without affording TENANT an opportunity to cure the default, may terminate this Lease forthwith without notice to TENANT.

IMPROVEMENTS

TENANT shall not make or allow to be made any interior or exterior structural or electrical construction, repairs, alterations, remodeling, renovations, reconstruction, or improvements in any portion of the Leased Premises, nor any alterations in the store-front of the exterior of the Leased Premises (collectively, or, as applicable, individually referred to as improvements) without first obtaining the written consent of CITY; which consent may in the sole and absolute discretion of CITY be denied, except in accordance with Paragraph 6.2 hereof.

6.1.1 Tenant shall not be allowed to cut, knock down, open or expand the walls of a stall.

If, however, CITY gives such consent, then TENANT agrees that the improvements to be constructed by TENANT shall be in accordance with approved retail and tenant mix plans and design specifications (hereafter "plans"), which, in all instances, have received the prior written approval of the City Market Square Facilities Coordinator, and where applicable, the Historic Design and Review Commission and any other City of San Antonio Board, Commission, Department, or agency having authority and jurisdiction over the approval of said plans, and further TENANT agrees that all improvements will be constructed to meet all Federal, State and local building codes. TENANT agrees that no construction or preliminary work of any kind will be done in connection with the aforementioned renovations and improvements until all written approvals and, if applicable, oral approvals are secured.

Furthermore, TENANT covenants that it shall not bind, or attempt to bind, CITY for the payment of any money in connection with the construction, repair, alteration, addition, remodeling, renovation, or reconstruction (collectively or individually) in, on or about the Leased Premises. Article 8 shall apply in case such improvements are made.

All permanent construction, repairs, alterations, additions, remodeling, renovations, reconstruction, and improvements, and TENANT'S work provided herein, shall become, upon expiration or other termination of the term of the Lease Agreement, the property of CITY without compensation by CITY to TENANT. Personal property, including, but not limited to, trade fixtures and merchandise not removed within ten (10) days after the expiration and/or termination date of this Lease Agreement, shall become the property of CITY without compensation or liability by CITY to TENANT for any disposition thereafter at private or public sale or otherwise.

In the construction of improvements to the Leased Premises and at all times thereafter, TENANT shall conform to and comply with all Federal, State and local laws, ordinances, permits, rules and regulations applicable to the Leased Premises and the operation of TENANT'S business therein.

TENANT covenants to undertake renovations or improvements in a reasonable and prudent manner with due regards for the safety of the public and with as little disruption as possible to the operation of Market Square and other tenants. TENANT further agrees to complete such renovation or improvements within a period of three (3) months after the date of final CITY approval to start construction of same, unless CITY, in its sole discretion, agrees otherwise.

TENANT is limited to the number of current electrical circuits installed per store stall ("Leased Premises"). No additional circuits may be installed on Leased Premises.

LIENS PROHIBITED

TENANT hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all authorized repairs or improvements of, and duly authorized modifications to, the Leased Premises, except such as are the responsibility of CITY hereunder, that may hereafter be made during the term hereof, or any extensions of said term. TENANT covenants and agrees to fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted by any person, persons, firm, or corporation on account of labor, material, or services furnished to TENANT during the performance of such authorized improvements and authorized modifications. TENANT agrees to get authorization in writing from CITY prior to the performance of any improvements or modifications to the Leased Premises referenced herein.

In the event any mechanic's materialman's, or other liens or orders for payment shall be filed against the Leased Premises or improvements thereon, or CITY-owned property located therein, during the term hereof, TENANT shall, within thirty (30) days after said date of filing, cause the same to be cancelled and discharged of record, by bond, payment directly (or into the registry of an appropriate Court), or otherwise in the manner chosen by TENANT and at the expense of TENANT and TENANT shall also defend on behalf of the CITY, at TENANT sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.

Failure of TENANT to comply with any requirement of this Article shall be cause for immediate termination of this Lease Agreement by CITY in accordance with provisions set forth elsewhere herein.

MAINTENANCE AND SECURITY

TENANT agrees, at TENANT'S sole expense, to keep the interior of the Leased Premises, including interior walls, flooring, doors and other interior improvements in good order and repair, and in clean, safe and sanitary condition and to paint the interior when necessary to maintain the interior of the Leased Premises, or any part thereof, in a manner satisfactory to CITY, and to replace or repair TENANT-installed equipment and fixtures as necessary.

CITY agrees to keep and maintain the roof, foundation, plumbing fixtures, plumbing lines and plumbing connections, building lights, main beams and exterior walls including shutters, window frames and glass, and restroom facilities (during normal business hours) in good order and repair, BUT CITY SHALL NOT BE LIABLE TO TENANT FOR ANY DAMAGE CAUSED BY THE SAME BEING OR BECOMING OUT OF REPAIR AND INCLUDING, BUT NOT LIMITED TO DAMAGE TO MERCHANDISE, TRADE FIXTURES, OR PERSONAL PROPERTY, UNLESS CAUSED BY CITY'S SOLE ACTIVE NEGLIGENCE.

The building in which the Leased Premises is located will be locked and secured by one (1) hour after closing time, each evening. Closing shall be at 6 p.m. during all months except June, July and August, which shall be at 8 p.m. The building shall remain locked and secured until TENANT'S opening hours the next morning, except in special circumstances as agreed to between the Market Square Facilities Coordinator and TENANT.

CITY'S RESERVATIONS: CITY reserves the right from time to time, to install, maintain, repair, and replace utility lines, pipes, ducts and wires passing through the Leased Premises that serve other parts of the premises within the Farmers Market Plaza Building. Any such installation, maintenance, repair, or replacement shall be placed in locations, which shall not unreasonably interfere with TENANT'S use of the Leased Premises, and shall be carried out to the extent possible so as to minimize inconvenience or disruption of TENANT'S business.

- 8.5 To assist the TENANT'S exhibit "C", Tenant criteria and Exhibit "D", Farmer's Market Operations and maintenance Guidelines.

SIGNS

TENANTS of the Farmers Market Plaza Building must purchase the standard wooden sign as approved by the CITY. Placement is located as shown in the design drawings and must be at the top of the arch or on the sign band. No other signs may be placed in the interior or exterior store windows, where applicable. Interior merchandise and pricing signs must be printed either with stencil, press, silk

screen, or press type and must not exceed 8 ½” x 11” or must be signs approved by both the City Director of Downtown Operations Department and the City Market Square Office. Handwritten signs are not acceptable. Use of small chrome or wooden sign stanchions are not acceptable to hold and frame signs. All exterior signs must comply with City’s Historic Design and Review Commission guidelines. Refer to Farmer’s Market Plaza Operation & Maintenance Guidelines for signage information.

Temporary signage, such as that used for special events, must be approved in writing, five (5) days in advance, by the Market Square Facilities Coordinator, and removed immediately following the conclusion of the event.

COMMON AREA

“Common Area” shall mean all areas, space, equipment, facilities, and services provided from time to time by CITY for the common use and benefit of the tenants of the Farmers Market, their employees, customers and other invitees, including exits, entrances, sidewalks, landscaped space, washrooms, lounges and shelters, refuse area, pedestrian walkways or courts. “Common Area” shall not include the Sales Area set forth in Section 11.1.

CITY shall, subject to events beyond its reasonable control, operate and maintain the Common Area and keep the Common Area in good order and repair, including any City-installed landscape materials indoors and/or outdoors.

SALES AND DISPLAY AREA

TENANT’S LEASED PREMISES for stalls stores includes a Display Space Sales area located two (2’) feet in front of TENANT’S store and does not exceed the lease line as shown in the floor plan diagram attached hereto and TENANT may display merchandise using acceptable display fixtures in this space in front of TENANT’S store. TENANT may not obstruct any entrance to the store stall with any type of displays, racks, merchandise, counters, etc. TENANT may not at anytime roll down overhead door during business hours of operation. Overhead door must remain completely open during business hours of operation. CITY has the right to order the removal of display merchandise and fixtures if TENANT’S display is not presentable, as determined by the Market Square Facilities Coordinator. TENANT must bring into the store any merchandise and display fixtures in said Display Sales Area and outside of TENANT’S store doors within one (1) hour after official closing each day. Any merchandise left in front of TENANT’S store sales area after official closing will be secured by CITY and donated to charity if TENANT fails to remove such merchandise after receiving twenty-four (24) hours notice from CITY to do so.

ENCROACHMENT on the Common Area beyond the authorized Display Space Sales area is not permitted, and violations of such will be fined at \$250.00 per day as per City Code 32-19 ©. More than two (2) repeat violations by TENANT in a twelve (12) month period shall be considered a condition of default and shall be grounds for Lease termination proceedings as provided in Article 18.

RULES AND REGULATIONS

TENANT covenants and agrees that TENANT, its employees, and invitees will comply with reasonable rules and regulations set by CITY from time to time for the efficient operation of the Farmers Market Plaza, including but not limited to the following:

- To use The Leased Premises only for the purposes permitted in Article 2; and
- To keep the Leased Premises in a condition acceptable to **CITY** and to not commit or permit any waste of said property; and
- To not commit nor permit the maintenance or commission of any nuisance on the Leased Premises and to not commit or permit the use of the Leased Premises for any unlawful purpose; and
- To not permit any person on the Leased Premises to willfully or wantonly destroy, deface, damage, impair or remove any part of the Leased Premises or appurtenance thereto. In particular, **TENANT**, shall not drive or permit to be driven any nails, hooks, tacks, screws, or stakes into the Leased Premises; and
- To not use nor permit the use of any explosive, flammable, or otherwise dangerous materials, equipment, or goods; and
- To properly and safely use and operate all electrical, gas, and plumbing fixtures, equipment, or appliances connected thereto, and to keep them clean and sanitary; and
- To keep the Common Area immediately adjoining the Leased Premises, including sidewalk, free and clear at all times of any obstructions; and
- To collect and dispose of all rubbish, garbage, litter or other waste in accordance with **CITY** policy (this clause shall not relieve **CITY** of its routine maintenance and clearing obligations); and
- To observe and comply with all the laws of the United States, the State of Texas, and Ordinances of the City of San Antonio; and
- To not place nor permit the placement or use of game or video coin-operated machines or coin-operated (pay) telephones, public telephones, vending machines, and/or associated equipment of any kind whatsoever on the Leased Premises, regardless of whether installed at **TENANT'S** expense or not; and
- To not obstruct nor permit the blockage of any entrance, passageway, electrical panel rooms, **CITY** storage rooms, or exit; and to not at anytime roll down overhead door during business hours of operation.
- To not use nor permit the use of loudspeakers, bull horns, strobe lights, or other bright, loud, or distracting devices, including radios; and
- To not conduct nor permit the conduct of any auction, going out of business sale, or salvage sale on or about the Leased Premises; and
- To not use the Leased Premises for the storage of materials, inventory or supplies, except in accordance with rules and regulations promulgated by the **CITY**; and
- To not discriminate nor permit discrimination on the part of **TENANT'S** agents or employees on account of race, color, religion, national origin, sex, or handicap in the use of, or admission to the Leased Premises; and
- To not use Common Area ceilings for storage without prior written permission of the Market Square Office; and
- To not display, sell, give away, or otherwise distribute or keep live animals, including, but not limited to birds, snakes, chickens, fish, or turtles; and

To not display or promote any activity or method of operation on or about the Leased Premises which exposes patrons thereof to nudity or partial nudity. For purposes of this provision, the following definitions apply:

Nudity means total absence of clothing or covering for the human body; and

Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

The Market Square Facilities Coordinator may make any other necessary rules and regulations in conjunction with the operation of Market Square, **TENANT** will be advised at least ten (10) days in advance in writing of any such proposed rules and regulations.

Should CITY provide handicapped accessible ingress and egress in specific locations, TENANT agrees to not block or otherwise cause the access way to be nonfunctional without providing an alternative means of access approved in writing by the Market Square Office of the City of San Antonio.

TENANT shall not place nor permit the display of any merchandise in the Common Area. Encroachment of the Common Area is subject to a fine, as noted in Section 11.2 above.

TENANT agrees to be bound by the provisions of the City Code Chapter 32. Article II. Market Square, as such may be amended or hereafter changed. Should such language conflict with this Lease Agreement, City Code language shall be controlling.

TENANT agrees to abide by Exhibit B, Farmers Market Criteria and Exhibit C, Farmers Market Operations and Maintenance Guidelines, which are attached.

INDEMNIFICATION

TENANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to TENANT'S activities under this AGREEMENT, including any acts or omissions of TENANT, any agent, officer, director, representative, employee, consultant or subcontractor of TENANT, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. TENANT shall promptly advise the CITY in writing of any claim or demand against the CITY or TENANT known to TENANT related to or arising out of TENANT'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at TENANT'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving TENANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (ARTICLE 13), is an INDEMNITY extended by TENANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. TENANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

INSURANCE REQUIREMENTS

Any and all employees, representatives, agents or volunteers of TENANT while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of TENANT only and not of the CITY. Any and all claims that may result from any obligation for which TENANT may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of TENANT.

Prior to the commencement of any work under this Lease Agreement, TENANT shall furnish a completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Downtown Operations Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The certificate(s), and endorsements, must have the agent's signature and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Lease Agreement until such certificate shall have been delivered to the CITY'S Director, Downtown Operations Department, and no officer or employee shall have authority to waive this requirement.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease Agreement and any extension or renewal hereof and to modify insurance coverage's and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

TENANT'S financial integrity is of interest to CITY, therefore, subject to TENANT'S right to maintain reasonable deductibles in such amounts as are approved by CITY, TENANT shall obtain and maintain in full force and effect for the duration of this Lease Agreement, and any extension hereof, at TENANT'S sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best rating of no less than A-(VII), in the following types and for amounts not less than the amount listed below:

TYPE	AMOUNT
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	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability	Statutory\$1,000,000/\$1,000,000/\$1,000,000
2.	Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Contractual Liability d. Products/completed operations e. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000.00 Aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of TENANT , including improvements and betterment to the Leased Premises	Coverage for a minimum of eighty percent (80%) of the Replacement Cost of TENANT'S property

As they apply to the limits required by the City, the CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may require the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. TENANT shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided by City within ten (10) days of the requested change. TENANT shall pay any costs incurred resulting from said changes.

TENANT agrees that with respect to the above required insurance; all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

Name the **CITY** and its officers, employees, volunteers and elected representatives as **Additional Insureds** as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the **CITY**.

TENANT through his Agent shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices prior to the change if TENANT knows of said change in advance, or ten (10) days notice after change if the TENANT did not know of the change in advance. Such notice must be

accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following address:

City of San Antonio
Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If TENANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may initiate Lease Agreement termination proceedings on the first event of default. The CITY may upon TENANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order TENANT to stop the use of the Premises hereunder until TENANT demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which TENANT may be held responsible for payments of damages to persons or property resulting from TENANT'S or its subcontractors' performance of the work covered under this Lease Agreement.

All personal property placed in the Leased Premises shall be at the sole risk of TENANT. CITY shall not be liable, and TENANT waives all claims for any damage either to the person or property of TENANT or to other persons due to the Leased Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. TENANT shall save and hold harmless CITY from any claims arising out of damage to TENANT'S property or damage to TENANT'S business, including subrogation claims by TENANT'S insurers.

14.11 TENANT understands and agrees that any violation of the above stated restrictions and failure to provide and maintain insurance would be a material breach of this Agreement and that just compensation for the harm suffered by CITY that would be caused by such violations cannot be accurately estimated and would be difficult to quantify, and that the following charges and procedures are a reasonable and good faith estimate by the parties of the extent of the damage which is reasonably certain to occur in the event of a violation.

- The first violation shall result in a written notice from CITY
- For each of the next three violations TENANT shall pay CITY \$50.00
- The fifth violation shall be deemed a material breach and default and cause for lease termination without opportunity to cure.

FIRE AND OTHER CASUALTY

In the event that the Leased Premises, or the building of which the same is a part, shall be partially damaged by fire, the elements, civil disorder, or other casualty, the Leased Premises and, to the extent necessary for TENANT to continue its business on the Leased Premises, the building or portions thereof shall be repaired at the expense of the CITY without unreasonable delay unless the CITY, at its sole discretion, determines that the damage is so extensive that repair or rebuilding is not practical. In such event, at the option of the CITY, and upon notice to TENANT, this Lease

Agreement shall cease and come to an end and the rent shall be apportioned and paid up to the date of such damage.

The CITY'S obligations to rebuild or repair shall be limited to the extent of insurance proceeds available to the CITY for such rebuilding or repair.

HOLDING OVER

Should TENANT hold over the Leased Premises, or any part thereof, after the expiration or termination of the term of this Lease Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy from month-to-month only, at a rental equal to the rent paid for the last month of the term of this Lease Agreement, plus ten (10%) percent of such amount. The inclusion of the preceding sentence shall not be construed as CITY'S consent for the TENANT to hold over.

ASSIGNMENT AND SUBLETTING

Except as provided under "DEATH BENEFIT" and in accordance with City Code Section 32-73, TENANT shall not assign the Lease Agreement and business conducted on the Leased Premises or any interest therein.

TENANT shall not sublet the Leased Premises or any part thereof or interest therein. Any subletting shall be null and void and CITY shall have the right to terminate this Lease Agreement with ten (10) days written notice, unless TENANT complies with the provisions of Section 17.3 herein.

The receipt by the CITY of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment and/or an acceptance of the assignee, or occupant as a TENANT, or a release of the TENANT from further observance or performance by the TENANT of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the CITY unless such waiver is in writing and signed by the CITY.

In accordance with CITY policy, codified as Section 32-104 of the City Code, TENANT is expressly prohibited from entering into any independent contracts or independent contract relationships with anyone in relation to the business or operation thereof conducted on the Leased Premises, which amounts to any assignment or subletting of the Leased Premises as determined solely by the CITY.

In the event the CITY suspects that the business on the Leased Premises is being operated by a person other than the TENANT, the CITY has the right, but not the duty, to inspect all of the books and records, to include but not be limited to, employment contracts, monthly operating expenses and reports, and accounts payable ledgers, if CITY reasonably believes that an assignment or subletting of the premises has occurred without CITY'S written approval.

In the event that the CITY determines that another person other than the TENANT is operating the business on the Leased Premises, the CITY, at its option, may declare the Lease Agreement terminated upon ten (10) days written notice.

CITY shall have the right to transfer and assign, in whole or in part, any of its rights under this Lease Agreement, and in the building and property referred to herein; and CITY shall by virtue of such assignment be released from such obligations, which are assumed by the assignee.

DEFAULT AND REMEDIES

The following events shall be deemed to be events of default by TENANT under this Lease Agreement in addition to any other events set forth herein:

TENANT shall fail to pay any installment, additional fees, penalty or rent as provided for in this Lease Agreement and shall not cure such failure within ten (10) days after the due date of such rent.

TENANT shall fail to operate or conduct business as prescribed by the **CITY** in Article 2, except on account of casualty, damage, remodeling or when the prior written consent of **CITY** is given.

TENANT shall fail to comply with any term, provision or covenant of this Lease Agreement, other than the payment of rent, and shall not cure such failure within ten (10) days after written notice thereof to **TENANT**.

TENANT, shall within ninety (90) days following the Commencement Date, fail to take possession of the Leased Premises, or having taken said possession, fail to open such Leased Premises for the conduct of business.

TENANT deserts or vacates all or any part of the Leased Premises; **TENANT** will be deemed to have deserted or vacated the premises if, by any method or manner whatsoever, **TENANT** assigns, transfers, sells or sublets its interest or right to the Leased Premises without the prior written consent of the **CITY**.

The taking by a court of competent jurisdiction of **TENANT** and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

Upon the occurrence of an Event of Default as heretofore provided, CITY may, at its option, declare this Lease Agreement, and all rights and interests created by it, terminated. Upon CITY electing to terminate, this Lease Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. CITY, its agents or attorney may resume possession of the Leased Premises and relet the same for the remainder of the original term for the best rent CITY, its agents or attorney may obtain for the account of TENANT, who shall make good any deficiency.

Any termination of this Lease Agreement as herein provided shall not relieve TENANT from the payment of any sum or sums that shall then be due and payable or become due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against TENANT hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from TENANT for any default hereunder. All rights, options and remedies of CITY contained in this Lease Agreement shall be cumulative of the other, and CITY shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

Upon any such expiration or termination of this Lease Agreement, TENANT shall quit and peacefully surrender the Leased Premises to CITY, and CITY, upon or at any time

after such expiration or termination, may without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess TENANT and remove TENANT and all other persons and property from the Leased Premises. Any property left on the premises shall be deemed abandoned and CITY may dispose of same by private or public sale or otherwise without further legal action by CITY or liability to TENANT therefore.

SEPARABILITY

If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then and in that event, it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part hereof, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

AMENDMENT

This Lease Agreement, together with the authorizing Ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

TAXES AND LICENSES

TENANT shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon TENANT, or upon the business conducted on the Leased Premises, or upon any of TENANT'S property used in connection therewith; and TENANT shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by TENANT, subject to agreements entered into by TENANT and Federal, State or local government authorities.

NOTICES

Notices to CITY required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, and addressed to:

City of San Antonio
Downtown Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **TENANT** shall be deemed sufficient if in writing and mailed, Certified mail, Postage Prepaid, addressed to **TENANT** at the address shown below **TENANT'S** signature line, or hand-delivered to **TENANT**.

DEATH BENEFIT

Where TENANT is a sole proprietorship and TENANT dies, the surviving spouse or TENANT'S heir or a testamentary beneficiary of TENANT or a representative of TENANT'S estate designated by a court of competent jurisdiction may operate the establishment until the end of the term of this Lease Agreement then in effect, as per City Code Section 32-73 (a), and subject to City Council approval.

CONSUMER PROTECTION

TENANT specifically covenants and agrees that it will honor a purchaser's request for an exchange or refund of merchandise purchased from TENANT'S business on the Leased Premises, in accordance with standard accepted business practices of retailers generally in the San Antonio area, unless TENANT conspicuously posts at the check-out counter where payment is made a sign, legible and in bold letters, at least 5" by 7" in size, clearly giving fair notice to consumers that TENANT'S policy is that all sales are final and that no refunds and/or exchanges will be given.

TENANT understands that the covenant made in this Article is created for the benefit of consumers and therefore shall run in favor of the public generally.

If TENANT does in fact have a policy of allowing exchanges, then such exchanges of merchandise purchased from TENANT will be honored for merchandise of the same price paid to TENANT for the exchanged merchandise.

TEXAS LAW TO APPLY

THIS LEASE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

CONFLICT OF INTEREST

TENANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a city officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency, such City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10%) percent or more of the voting stock or shares of the business entity, or ten (10%) percent or more of the fair market values of a business entity; a business entity in which any individual or entity above is listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

TENANT warrants and certifies, and this Lease Agreement is made in reliance thereon, that he, his officers, employees and agents, are neither officers or employees of the City of San Antonio or any of its agencies such as City-owned utilities.

LIEN FOR RENT

In consideration of the mutual benefits arising under this Agreement, TENANT does hereby mortgage, and grant a security interest under the Texas Business and Commerce Code into CITY upon, all property of TENANT now or hereafter placed in or upon the Leased Premises (except for [1] inventory sold in the normal course of business or [2] equipment, trade fixtures, or other merchandise proven by written evidenced of TENANT to be subject to a prior lien and security interest as of the Commencement Date of this Lease Agreement only and at no other late date), and such property is hereby subjected to a lien and security interest in favor of CITY and shall be and remain subject to such a lien and security interest of CITY for payment of all rents and other sums agreed to be paid by TENANT herein. At CITY'S request, TENANT shall execute and deliver to CITY a financing statement appropriate for use under said code. Such lien and security interest shall be in addition to and cumulative of CITY'S liens provided by law.

TENANT'S RIGHT TO QUIET ENJOYMENT

The relationship created herein by this Lease Agreement is that of Landlord and TENANT and not an agency or partnership. In accordance therewith, and subject to the conditions listed in Article 1 and subject to TENANT'S performance of all covenants herein made by TENANT, the CITY agrees that TENANT shall and may peaceably and quietly have, hold, and enjoy the Leased Premises.

GENDER

Words of any gender used in this Lease Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

CAPTIONS

The captions contained in this Lease Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Lease Agreement.

AUTHORITY

If the signatory of this Lease Agreement is an entity or other than an individual who is the TENANT, then the signer hereof for TENANT hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of TENANT.

WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____, 2011.

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

**TENANT:
dba TBD**

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Residence Address

City, State, and Zip Code

Area Code/Telephone Number

Email Address