

**CONCESSION AND LICENSE AGREEMENT BETWEEN
THE CITY OF BURLINGTON AND THE BURLINGTON FARMERS' MARKET
FOR THE 2012 OUTDOOR MARKET SEASON**

This LICENSE and CONCESSION AGREEMENT (hereinafter AGREEMENT) is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont, by and through its Department of Parks and Recreation (DPR), Department of Public Works (DPW), and Police Department (PD) collectively (hereinafter the CITY), and the Burlington Farmers' Market Association, Inc., of Burlington, Vermont (hereinafter FARMERS' MARKET, CONCESSIONAIRE, and/or LICENSEE), a corporations organized under the laws of the State of Vermont with its principal place of business in Burlington, Vermont .

WITNESSETH

WHEREAS, the CITY manages property of the city of Burlington and public properties and right of ways, including City Hall Park, St. Paul Street, and the sidewalk right-of-ways adjacent to St. Paul Street and City Hall Park; and

WHEREAS, THE FARMERS' MARKET desires to operate in City Hall Park and St. Paul Street and the sidewalks adjacent thereto a concession service for the sale of farm produce, baked goods, other food and beverage products and crafts to carry out the functions of a Farmers' Market commencing on the second Saturday in May, 2012 and ending on the last Saturday in October, 2012; and

WHEREAS, THE CITY will be doing repairs to portions of City Hall Park during the 2012 season that would interfere with THE FARMERS' Market's prior operation that was located solely in City Hall Park; and

WHEREAS, THE FARMERS MARKET has regularly requested more space than

could be accommodated solely using City Hall Park and that as such THE CITY and THE FARMERS' MARKET desire to use this AGREEMENT as a pilot offering to increase the space allocated to the market and will evaluate the use of the streetscape so as to accommodate the future expansion of the market; and

WHEREAS, the CITY and THE FARMERS' MARKET wish to continue their mutually advantageous agreement for the 2012 outdoor season despite the City's work on City Hall Park; and

WHEREAS, the CITY and THE FARMERS' MARKET agree that the use of a portion of St. Paul Street adjacent to City Hall Park would be a reasonable alternative space for the FARMERS' MARKET to operate, in addition to the continued use of a portion of City Hall Park not under repair; and

WHEREAS, the FARMERS' MARKET has requested that it be permitted to place various stalls, tables, chairs and miscellaneous other furniture on St. Paul Street in addition to those permitted in City Hall Park necessary for the Farmers' Market to operate;

NOW THEREFORE, for and in consideration of the mutual covenants and agreements herein contained thee parties agree as follows:

1. CONCESSIONAIRE VENDOR SETUP AREAS:

The following areas are subject to this License and Concession Agreement (hereinafter PREMISES) and a map of the PREMISES is attached as Exhibit A:

A. A fifteen (15) foot wide sidewalk on the north side of City Hall Park, adjacent to College Street, beginning at St. Paul Street and ending at the Millennium Sculpture;

B. Two ten (10) foot wide strips of turf along both sides of the park walkway parallel to

the so-called Merchants Bank Building currently housing Ri Ra, but no further than the north side of the BCA Center;

C. A ten (10) foot wide strip of turf along the east side of the diagonal park walkway leading to the City Hall Park fountain from the Millennium Sculpture located at the north-east corner of the park adjacent to the south side College Street sidewalk;

D. A ten (10) foot wide by thirty two (32) foot long strip of turf along the south side of the pathway leading from the fountain west to St Paul Street;

E. A ten (10) foot wide by one hundred ten (110) foot long strip of turf along west side of the diagonal pathway leading from the fountain southwest to the corner of Main Street and St. Paul Street;

F. A ten (10) foot wide by twenty four (24) foot long strip of turf along the southwest side of the fountain between the two previously described strips; (A four (4) foot wide gap shall be maintained between the vendors utilizing this section);

G. A ten (10) foot wide strip of turf along the north side of the park walkway starting at and leading from the fountain east to a point 5 feet short of the pathway parallel to the Firehouse Art Center;

H. The portion of St. Paul Street between Main Street and College Street that will be closed to vehicular traffic pursuant to and further described in the Police Department permit attached as Exhibit B.

2. GENERAL DESCRIPTION OF CONCESSION GRANTED

Subject to terms and conditions hereinafter set forth, CONCESSIONAIRE may do the

following:

Exercise the right on the premises referenced in paragraph one (1) above to sell farm produce, baked goods, prepared foods, beverages, and crafts, provided that CONCESSIONAIRE shall have no authority to conduct general merchandising nor any sale of other items not herein specified.

The City requires that the percentage of craft based vendors shall not exceed 35% of the total number of vendors at any time during the life of this Agreement;

CONCESSIONAIRE shall have exclusivity for all other vending purposes or activities within the entirety of City Hall Park and the portion of St. Paul Street between Main Street and College Street, except as granted by the City or the CONCESSIONAIRE

3. INVESTMENT BY CITY

The premises will be furnished to CONCESSIONAIRE as is, without improvements such as booths, tables, etc. which will be required to operate the concession effectively. All such improvements to the premises subject to this agreement made by CONCESSIONAIRE shall be temporary and will be erected at the expense of CONCESSIONAIRE according to plans approved in advance by the Director of Parks and Recreation. All personal property and equipment will remain the property of CONCESSIONAIRE and shall be removed at the termination of each Farmers' Market day's activity.

4. OBLIGATION OF CONCESSIONAIRE

a. CONCESSIONAIRE shall provide Farmers' Market service on Saturdays, beginning with the second Saturday in May and ending with the last Saturday in October, between the hours of 8:30AM and 2:30PM;

b. CONCESSIONAIRE shall maintain and operate the concession in a businesslike manner and shall keep the premises in a safe, clean, orderly and inviting condition at all times in operation;

c. CONCESSIONAIRE shall not retain as an employee any person or persons in or about the premises who shall use vulgar or act in an unreasonably loud or boisterous or otherwise improper manner;

d. CONCESSIONAIRE agrees to revoke the membership of any member whose conduct the City finds, with valid cause, is detrimental to the best interests of the City as determined by the Director of Parks and Recreation;

e. CONCESSIONAIRE, employees, agents or members shall at all times comply with the laws and regulations of the United States of America, the State of Vermont, and all applicable City of Burlington ordinances, codes, and regulations and the rules and regulations of the Burlington Department of Parks and Recreation. Violations thereof by CONCESSIONAIRE, agents, members, or employees, or the revocation of any permits or licenses required in performance of this Agreement, shall be cause for termination of this Agreement at the option of the City if not corrected within a reasonable period following notice thereof;

f. CONCESSIONAIRE, employees, agents or members shall pay all taxes or assessments that may be lawfully levied against it by reason of the operations on the premises subject to this Agreement;

g. CONCESSIONAIRE shall provide the complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage, recycling, and other refuse

caused as a result of the operation of the Farmers Market. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the premises, is forbidden;

h. CONCESSIONAIRE shall comply with all applicable recycling regulations;

i. Immediately following each Farmers' Market, CONCESSIONAIRE shall provide for the trucking of all above mentioned trash, garbage, refuse, and recycling to the designated Parks and Recreation facility at the Burlington waterfront or any other facility so designated by the City. CONCESSIONAIRE shall place all trash and recyclables into the proper containers provided by the City at said waterfront collection area;

j. CONCESSIONAIRE shall at its sole expense, provide all necessary clean-up service for the maintenance of all premises subject to this Agreement including walks and turfed areas;

k. CONCESSIONAIRE shall repair and/or replace all walkways, trees, and improvements within the interior of the premises that may be damaged as a result of the operation of the Farmers' Market as determined by the City;

l. CONCESSIONAIRE shall provide protection for all turfed areas designated by the City;

m. CONCESSIONAIRE may install location signs in harmony with the architectural treatment of City Hall Park and St. Paul Street with prior approval of the Director of Parks and Recreation in accordance with specifications approved by said Director;

n. CONCESSIONAIRE, employees, agents or members agree that they shall not engage in other business or activities within the confines of City Hall Park and the premises subject to this Agreement other than those expressly authorized by the City;

o. CONCESSIONAIRE shall arrange and locate individual vendors so as to maximize visual access to the market area and City Hall Park, with particular consideration from the Church Street Marketplace perspective and with prior approval of the Director of Parks and Recreation;

p. CONCESSIONAIRE shall submit to the City prior to May 4 current guidelines, bylaws, and officers' names and addresses as well as a current list of vendors and the type of items they are vending;

q. CONCESSIONAIRE shall not affix, or allow to be affixed, any object to any permanent or temporary artwork, fixture, tree or shrub within the City Hall Park or any other part of the premises subject to this Agreement including staking the ground;

r. CONCESSIONAIRE shall cover all parking meters as directed by the Burlington DPW and/or the Burlington Police Department; and

s. CONCESSIONAIRE shall comply with all other directives of the Department of Parks, Department of Public Works, and Police Department concerning use of the Premises subject to this Agreement and City shall close St. Paul Street to vehicular traffic between Main Street and College Street starting no earlier than 6:30am and reopen the street to traffic no later than 3:00pm as directed by the Burlington Police Department.

t. CONCESSIONAIRE shall ensure that all turf areas in City Hall Park referenced in this Agreement shall be subject to the turf protection measures approved in advance by the Director of Parks and Recreation and demarcated on the Park and Street map attached as Exhibit A. Ongoing turf protection measures may result in annual re-appropriation of park areas for use by the FARMERS MARKET, with said areas determined and agreed to by the

parties, including any change in fees assigned as a result as determined by mutual agreement of the parties.

u. CONCESSIONAIRE agrees to support the upkeep and maintenance of City Hall Park and the PREMISES, including turf, vegetation, and infrastructure, by making a financial contribution to the Department of Parks and Recreation in the amount of one thousand five hundred dollars (\$1,500.00) by June 1, 2012. Furthermore, at a time mutually agreed upon by the parties sometime later in the 2012 Farmers Market season, CONCESSIONAIRE shall meet with Parks and Recreation staff to define the scope of additional improvements needed for City Hall Park and the PREMISES, and CONCESSIONAIRE hereby agrees to be responsible for an in-kind contribution and/or an additional financial payment to Parks and Recreation in an amount to be determined and mutually agreed upon by the parties.

5. INDEMNIFICATION AND INSURANCE

a. CONCESSIONAIRE agrees to indemnify and hold harmless the City, its agents, officers, representative, and employees, the Parks and Recreation Commission, the Public Works Commission, and the Police Commission members, and all of their successors and assigns, individually and collectively, from and against any and all liability for injuries to persons or damage to property occasioned by the operation of the Farmers' Market by the CONCESSIONAIRE, or its officers, agents, representatives, members, suppliers, vendors, contractors, guests, patrons, invitees, or employees, or by reason of any violations, disregard, or breach of any contract, law, ordinance, order or regulation by the CONCESSIONAIRE, its officers, agents, representatives, members, suppliers, vendors, guests, contractors, patrons, invitees, or employees.

b. CONCESSIONAIRE further agrees to pay all expenses in defending against any claims made against the City related to operation of the Farmers' Market subject to this Agreement, provided, however, that the CONCESSIONAIRE shall not be liable for any damage, injury or loss occasioned by negligence on the part of the City, or its agents, officers, representatives and employees. CONCESSIONAIRE shall give to the City prompt and timely notice, in writing, of any claims made or service of process received in any suit concerning such injury or damage.

c. To cover the acts or omissions of itself, its officers, agents, representatives, members, suppliers, vendors, contractors, guests, patrons, invitees, or employees, CONCESSIONAIRE shall purchase and maintain insurance coverage for not less than the following limits, listing the City of Burlington as an additional insured and furnishing a certificate to the City of Burlington evidencing such coverage:

Comprehensive General Liability:

Bodily Injury:	\$1,000,000 each occurrence
	\$2,000,000 in aggregate

Property Damage:	\$1,000,000 each occurrence
	\$2,000,000 in aggregate

A combined single limit of \$1,000,000 each occurrence, \$2,000,000 in aggregate acceptable.

d. CONCESSIONAIRE shall furnish to the City satisfactory evidence that it carries Workman's Compensation Insurance in accordance with the laws of the State of Vermont covering all employees of CONCESSIONAIRE who must by law be so covered.

e. Each individual vendor who sells under the CONCESSIONAIRE'S jurisdiction shall carry Product Liability Insurance in the amounts of \$1,000,000 for each occurrence and \$2,000,000 in aggregate, and each policy shall name the City of Burlington as a certificate holder and named as additionally insured.

6. TERM OF AGREEMENT

Subject to earlier termination as provided hereinafter, the term of this Agreement shall be for a period commencing on the second Saturday in May, 2012 and ending on the last Saturday in October, 2012.

7. RENTALS - ACCOUNTING RECORDS

a. During the term of this Agreement CONCESSIONAIRE shall pay to the City an annual and combined concession and license fee, due in two equal installments - the first on June 1 and the second on August 1 - the following amount:

	<u>June 1</u>	<u>August 1</u>	<u>Total</u>
2012 Season	\$3,150.00	\$3,150.00	\$6,300.00

b. All financial records, documents, books and accounts of the concession shall be kept and retained by CONCESSIONAIRE for a period of one-year following the close of the season. Within ninety (90) days after the close of the season and term of this Agreement, CONCESSIONAIRE shall provide a report to the City via the Director of Parks and Recreation detailing the annual gross income from the operations of Farmers' Market for the year and such other details as the Director of Parks and Recreation may require consistent with this Agreement.

8. RIGHTS OF INGRESS AND EGRESS

Subject to regulations governing the use of City Hall Park, CONCESSIONAIRE shall have for itself, for its employees, members, agents, contractors, suppliers, guests, patrons and invitees, the right of access to and egress from the premises covered by this Agreement during the hours of 7:00AM and 3:00PM on each day of operation of the Farmers' Market.

9. TERMINATION BY CONCESSIONAIRE

This Agreement shall be subject to cancellation by CONCESSIONAIRE should any one or more of the following events occur:

- a. The permanent abandonment of City Hall Park and/or the Premises subject to this Agreement by the City;
- b. The issuance of an injunction by any court of competent jurisdiction that in any way prevents or restrains the use of City Hall Park and/or the Premises subject to this Agreement provided that such injunction remains in force for at least thirty (30) day;
- c. The breach by the City of any of the terms, covenants or conditions of this Agreement to be kept, performed and/or observed by the City and the failure of the City to remedy any such breach for a period of sixty (60) continuous days after written notice from Concessionaire of the existence of any alleged breach;
- d. The assumption by the United States Government, or any authorized agency of same, of the operation, control or use of City Hall Park and/or the Premises subject to this Agreement in such a manner as to substantially restrict CONCESSIONAIRE from operating the Farmers' Market, if such restriction be continued for a period of three (3) months or more.

10. TERMINATION BY CITY

This Agreement shall be subject to cancellation by the City should any one or more of the following events occur:

- a. If Concessionaire files a voluntary petition of bankruptcy;
- b. If proceedings in bankruptcy are instituted against CONCESSIONAIRE and CONCESSIONAIRE is adjudicated bankrupt pursuant to such proceedings;
- c. If a court takes jurisdiction of CONCESSIONAIRE and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act;
- d. If a Receiver for CONCESSIONAIRE 'S assets is appointed;
- e. If CONCESSIONAIRE is divested of its rights, powers, and/or privileges under this Agreement by any other operation of law;
- f. If CONCESSIONAIRE defaults on or fails to make any payments at the times and in the amounts as required of it under this Agreement;
- g. If CONCESSIONAIRE abandons and/or discontinues the operation of the concession that is the subject of this Agreement;
- h. If CONCESSIONAIRE fails to perform, keep, and/or observe any of the covenants and conditions contained in this Agreement to be performed, kept, and/or observed by CONCESSIONAIRE;
- i. If CONCESSIONAIRE fails to abide by all applicable laws, local ordinances, and general rules and regulations of the United States, State of Vermont, City of Burlington, and the Department of Parks and Recreation.

Provided that upon the happening of any of the contingencies recited above in

subsections (a) – (i) above, the Director of Parks and Recreation shall give written notice to CONCESSIONAIRE to correct or cure such condition, default, failure to perform or breach and if within ten (10) days from the date of such notice the default, failure to perform, or breach complained of shall not have been corrected in a manner satisfactory to the Director of Parks and Recreation on behalf of the City, then and in such event the City shall have the right at once and without further notice to CONCESSIONAIRE, to declare this Agreement terminated and to enter upon and take full possession of the Premises subject to this Agreement.

The acceptance of fees by the City for any period or periods after a default of any of the terms, covenants and conditions herein contained to be performed, kept and observed by the CONCESSIONAIRE shall not be deemed a waiver of any rights on the part of the City to cancel this contract in the event of a breach.

11. RESTORATION OF PREMISES

Upon termination of this Agreement or in the event that any of the Premises subject to this Agreement is relinquished by CONCESSIONAIRE, CONCESSIONAIRE shall restore the Premises and all improvements to the condition in which they were received, constructed or installed, reasonable wear and tear and damage by fire or the elements excepted as evidenced by a checklist and supporting documentation maintained the City..

12. DAMAGE OR DESTRUCTION OF PREMISES

It is understood and agreed that if the Premises subject to this Agreement are damaged or destroyed in whole or in part by fire or other cause not the fault of CONCESSIONAIRE during the term hereof, the City will repair and restore them to a good tenantable condition

with reasonable dispatch, and that the fee herein provided for shall abate entirely in case the entire premises are un-tenantable, and will be prorated for the portion rendered un-tenantable in case only a part of the Premises becomes un-tenantable, until the premises are restored except:

a. There shall be no abatement of fee if such fire or other cause damaging or destroying the Premises result from the negligence or willful act or omission of CONCESSIONAIRE, its officers, agents, representatives, members, suppliers, vendors, contractors, guests, patrons, invitees, or employees, but such fee shall abate to the extent the City recovers such loss from insurance;

b. In case the Premises are destroyed to the extent of more than fifty (50) percent of the value thereof, the City or CONCESSIONAIRE may at its option terminate this Agreement forthwith by a written notice to that effect.

13. RIGHT OF INSPECTION

The Director of Parks and Recreation or his or her duly authorized representatives shall have, at any and all reasonable times, the full and unrestricted right to enter the Premises for the purpose of inspecting or protecting such Premises and of doing any and all things with reference thereto which the City is obligated to do as set forth herein or which may be deemed necessary for the proper general conduct and operation of City Hall Park in the exercise of the City's police power.

14. ASSIGNMENT AND SUBLETTING

The privileges granted herein are solely those of CONCESSIONAIRE and CONCESSIONAIRE agrees that it will not assign, sublet, or underlet same or any part thereof

without the express written consent of the City, which shall not be unreasonably withheld.

Any purported assignment in violation hereof shall be void.

15. RULES AND REGULATIONS

The City shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of City Hall Park and the Premises subject to this Agreement, which CONCESSIONAIRE agrees to observe and obey, provided said rules and regulations do not specifically negate any part of this Agreement.

16. GENERAL PROVISIONS

a. Notices to the City provided for in this Agreement shall be sufficient if sent by registered mail, postage prepaid, addressed Director of Parks and Recreation Department, 645 Pine Street, Suite B, Burlington, VT 05401 or to such other address the parties may designate to each other from time to time in writing;

b. Notices to CONCESSIONAIRE provided for in this Agreement shall be sufficient if sent by registered mail, postage prepaid, addressed to Spencer Welton, Burlington Farmers' Market Association, Inc., P.O. Box 1333, Burlington, VT 05402, or to such other address the parties may designate to each other from time to time in writing.

c. CONCESSIONAIRE represents that it has carefully reviewed the terms and conditions of this Agreement, and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement;

d. The term the "City" as used in this Agreement means the City of Burlington,

Vermont acting by and through its Department of Parks and Recreation, Department of Public Works, and Police Department.

17. SUCCESSOR AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Agreement shall extend to and bind the successors and assigns of the respective parties hereto.

18. INVALID PROVISIONS

In the event that any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained, the remainder of the Agreement shall remain in effect provided that any such covenant, condition or provision found to be invalid does not materially prejudice either the City or CONCESSIONAIRE.

19. COVENANT AGAINST DISCRIMINATION

CONCESSIONAIRE agrees not to discriminate against any employee, agent, or applicant for employment or membership in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment or membership, or any matter directly or indirectly related to employment or membership because of race, religion, gender, country of origin, or sexual orientation.

20. PERMITS

This Agreement shall have the same force and effect of a Permit issued by the Department of Parks and Recreation, the Department of Public Works, and the Police Department. CONCESSIONAIRE shall be responsible for obtaining all other necessary CITY and/or State permits required for operation of the Farmers' Market.

21. LIMITATION OF RIGHTS

CONCESSIONAIRE acknowledges that no property or other right is created by the Agreement other than that specifically defined and limited by this Agreement.

DATED at Burlington, Vermont, this ____ day of May, 2012.

CITY OF BURLINGTON

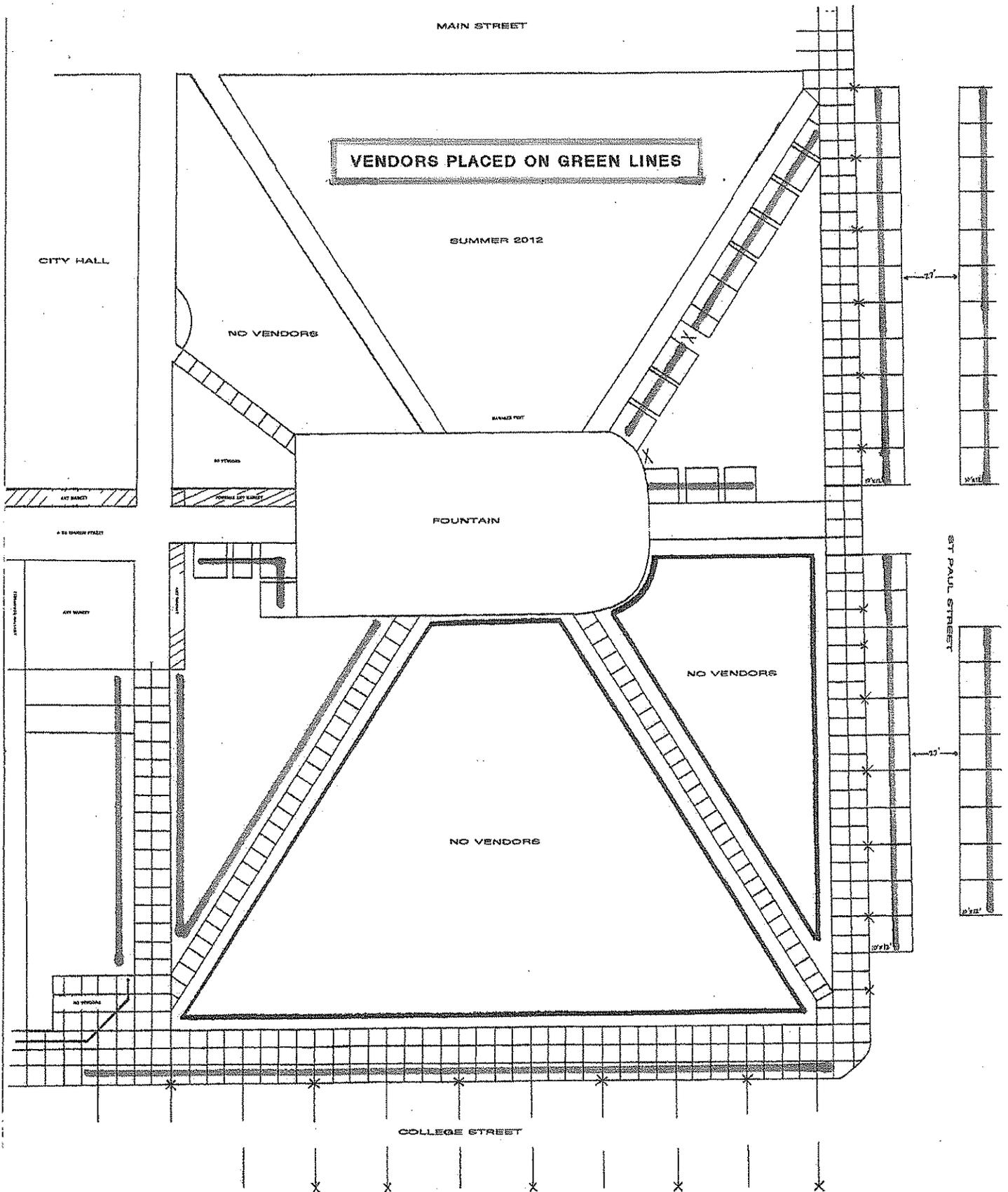
Witness

By: _____
Miro Weinberger, Mayor
Duly Authorized

BURLINGTON FARMERS' MARKET
ASSOCIATION, INC.

Witness

By: _____
Spencer Welton, President
Duly Authorized





CITY OF BURLINGTON, VT
PERMIT

DATE: Saturday May 12th- Saturday October 27th, 2012

TIME: 06:30-15:00

LOCATION: St. Paul Street between Main Street and College Street.

EVENT: **BURLINGTON FARMERS' MARKET**

ORGANIZATION: Burlington Farmers Market

COORDINATOR(S): Spencer Welton (President: Farmers Market)

PERMIT ISSUED BY POLICE DEPARTMENT. 04-25-12 TIME: 0800

SIGNATURE OF DEPARTMENT REPRESENTATIVE Lt. Bruce D. Bovat

ADDITIONAL INFORMATION (Check all that apply):

- Participants will comply with all Local, State, and Federal laws.
- Group is responsible for any and all clean-up of debris, as direct result of the Farmers Market, from the street and the adjacent sidewalks.
- Group will erect barricades on St. Paul Street at Main Street and St. Paul Street at College Street. These barricades will stretch the entire distance of the road, from the western sidewalk to eastern sidewalk. The barricades must be immediately visible to motorists and prohibit entrance by unauthorized vehicles.
- Group will acquire authorized signage for parking meters. Temporary signage may be used until permanent signs are acquired. Signs will stipulate the hours and dates parking is prohibited.
- Group will ensure no parking signs are in place NLT 18:00 hours the evening prior to Market operation.
- Market operations will immediately cease and the street will be opened if so ordered by Police or Fire Personnel for purposes of public safety.

I, the undersigned, hereby certify that the foregoing is a true and accurate representation. Any false statement herein may result in revocation of this permit. I acknowledge that failure to abide by the above conditions can result in this permit being revoked.

SIGNATURE _____ DATE _____ PHONE _____
ADDRESS _____

Copies to:

- Operations Deputy Chief
- Roll Call Copy
- City Council
- City Attorney
- City Clerk
- Park's Department
- DPW
- Fire Department
- Other: