

# Freshest Cargo Site Plan and Agreement



Fresh Approach is a Section 501(c)(3) nonprofit organization whose mission is to create long-term change in local food systems by connecting California communities with healthy food from California farmers and by expanding knowledge about food and nutrition.

Fresh Approach's Freshest Cargo Mobile Farmers' Market program is a "farmers' market on wheels" that addresses issues related to lack of access to fresh, locally-grown produce in the Bay Area. This Site Plan and Agreement ("Agreement") establishes the basis on which Fresh Approach will operate a mobile farmers' market ("Market") from a truck on a site ("Site") maintained by Host.

## Fresh Approach

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<b>Fax Number</b>	(925) 825-9101
<b>Mailing Address</b>	5060 Commercial Circle, Suite C Concord, CA 94520

## City of San Pablo ("Host")

<b>Contact Person</b>	Greg Dwyer
<b>E-mail Address</b>	<a href="mailto:gregd@sanpabloca.gov">gregd@sanpabloca.gov</a>
<b>Phone Number</b>	(510) 215-3081
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<b>Mailing Address</b>	13831 San Pablo Ave. San Pablo, CA 94806

## Fee and Site

<b>Payment Schedule</b>	June 1 <sup>st</sup> : \$6000 August 1 <sup>st</sup> : \$7733.5 October 1 <sup>st</sup> : \$7733.5 <b>Total not to exceed \$21,467</b>
<b>Payment Timing</b>	Within [30] days of receipt of invoice. See Section 1.1 of Terms and Conditions.
<b>Site Address</b>	Freshest Cargo will bring operations of the mobile market at: Wanlass Park, Contra Costa College, San Pablo City Hall and West County Health Clinic
<b>Site Access</b>	Host must provide restroom access to Fresh Approach personnel.  Designated parking space must accommodate a truck at least 22 feet long. Please attach a street view map depicting the designated parking space.

## Market schedule

<b>Term of Service</b>	May 1, 2017 (start)
	October 31, 2017 (end)
<b>Frequency</b>	Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Monthly <input type="checkbox"/> Other:
<b>Day(s)</b>	The mobile market will operate one day a week in the City of San Pablo.
<b>Time</b>	8:00 AM (start)
	3:00 PM (end)

This Agreement, which includes this form ("Site Plan") and the attached Terms and Conditions, creates a legal contract between Fresh Approach and Host. By signing below, Fresh Approach and Host each confirm that it understands and agrees to the terms of this Agreement.

## Fresh Approach

Signature

Name (print)

Title (print)

Date

## [Organization Name]

Signature

Name (print)

Title (print)

Date

## **Designated Parking Space on Site**

**Insert Street View Map  
of Designated Parking Space on Site**

# Terms and Conditions

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## 1. Fee and Site

### 1.1 Fee and Payment

Host will pay the fee specified in the Site Plan to Fresh Approach for operating a Market on the Site. Fresh Approach will periodically prepare and send to Host an invoice stating the total amount due in fees and the number of Markets conducted. Host will pay undisputed invoices in full per the schedule on page 1.

### 1.2 Use of Site

Host authorizes Fresh Approach to use the Site for the Market during the term of service and according to the Market schedule set out in the Site Plan.

### 1.3 Site and Restroom Access

Host will provide Fresh Approach access to the Site, including unlocking the Site as appropriate, making a restroom accessible to Fresh Approach personnel during scheduled use of the Site, and designating a parking space on the Site to accommodate a truck at least 22 feet long.

### 1.4 Changes to Market Schedule

The Market schedule set out in the Site Plan, including the frequency, day(s), and time, may need to change to accommodate shifting demand or other conditions. To change the Market schedule, both parties must agree to the change in writing at least 7 days in advance of the change. For the purpose of this Section 1.4, an email qualifies as "in writing."

## 2. Activities

### 2.1 Responsibility for Market Activities

Fresh Approach will have sole responsibility for the planning, management, and implementation of its Market activities including, without limitation, operating the truck and purchasing and selling produce. Fresh Approach personnel at the Market will be acting solely on behalf of Fresh Approach.

### 2.2 Site Condition

Fresh Approach will act with due care during operation of the Market to keep the Site in the condition in which Host made it available.

### 2.3 Licenses and Permits

Fresh Approach confirms that it holds the licenses, permits, and registrations it needs for operating the Market, including, without limitation, local sales and health department permits.

## 3. Market Promotion

### 3.1 Name and Logo Use

Fresh Approach and Host may use the other's name and logo for the sole purpose of promoting the Market on their respective websites, Promotion Materials (defined below), and other outreach-oriented materials relating to the Market. Fresh Approach will obtain no other rights to Host's name and logo, and Host will obtain no other rights to Fresh Approach's name and logo.

### 3.2 Market Promotion

Fresh Approach will provide Host with physical and electronic copies of materials for use in publicizing and conducting Market activities ("Promotion Materials"). Promotion Materials may include, without limitation, flyers, brochures, posters, handouts, social media posts, and emails. Host will distribute Promotion Materials to potential Market customers within its organization at least once per week during the term of this Agreement or as otherwise directed by Fresh Approach.

### 3.3 Media Release

Fresh Approach may film, record, and photograph the Market at the Site. Fresh Approach may use any filmed, recorded, or photographed material on its website, in Promotion Materials, or on other forms of media at Fresh Approach's sole discretion, subject to obtaining appropriate consents, if required, from individuals depicted in such material.

## 4. Relationship

### 4.1 Cooperation

Fresh Approach and Host will cooperate in connection with the Market by providing information about Site conditions, promoting the Market, carrying out all obligations on a timely basis, keeping each other advised about potential issues, and working in good faith to resolve problems, which may arise.

### 4.2 No Rights in Host Property

Fresh Approach's right to occupy and use the Site for the Market is a license only and does not constitute a grant of any ownership, leasehold, easement, or other property interest or estate in any Host property.

### 4.3 Independence

Fresh Approach and Host are and will remain independent contracting parties. The arrangements contemplated by this Agreement do not create a partnership, joint venture, employment, fiduciary, or similar relationship for any purpose. Neither Fresh Approach nor Host has the power or authority to bind or obligate the other to a third party or commitment in any manner.

## **5. Insurance and Liability**

### **5.1 Insurance**

Fresh Approach confirms that it will maintain worker's compensation and general liability insurance covering Fresh Approach personnel and activities at the Market. Host confirms that it has appropriate insurance coverage for hosting the Market on the Site as set forth below:

a. General Liability and Bodily Injury Insurance. Commercial general liability insurance of at least \$1,000,000 per occurrence/\$2,000,000 in aggregate for property damage, bodily injury, personal and advertising injury and products and completed operations. By endorsement, the policy shall state that this insurance will operate as primary insurance and City, its officers, employees and agents are named additional insureds.

b. Automobile Liability Insurance. Automobile liability insurance for at least \$1,000,000 per person/per occurrence.

c. Workers Compensation Insurance. Workers' Compensation Insurance and Employers' Liability for at least \$1,000,000 for all of Contractor's employees, including a waiver of subrogation.

d. Certificate of Insurance. Contractor shall provide Certificates of Insurance and Endorsements stating that the insurance policies shall not be suspended, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, to City. In addition, Contractor shall provide thirty (30) days prior written notice to City of any suspension, cancellation, reduction of coverage or in limits of the insurance coverage required by this Agreement.

### **5.2 Liability**

For the purpose of this Section 5.2, the terms "Host" and "Fresh Approach" include those entities and their respective directors, officers, employees, and agents. Fresh Approach will be solely responsible and liable for its own actions or inactions and for any and all information, products, and services it provides at the Market. Fresh Approach will not be responsible to Host for the condition of the Site as made available to Fresh Approach. Neither party will be liable to the other for any incidental, special, consequential, exemplary, punitive, or indirect damages arising out of or resulting from operation of the Market or otherwise under this Agreement.

## **6. Termination**

### **6.1 Notice of Termination**

A party may terminate this Agreement by providing written notice to the other party. The termination will become effective 14 days after delivery of the written notice.

### **6.2 Effect of Termination**

Upon termination, Fresh Approach and Host will promptly cease promotional activities, including distribution of Promotion Materials and use of the other's name and logo. Fresh Approach will invoice Host for fees payable through the date of termination, and Host will pay Fresh Approach within 10 days following receipt of the invoice. Sections 4, 5.2, 6.2, and 7 will continue in effect.

## **7. General Provisions**

### **7.1 Entire Agreement**

This Agreement expresses the final, complete, and exclusive agreement between Fresh Approach and Host and supersedes all prior or contemporaneous agreements, arrangements, negotiations, communications, course of dealing, or understandings between Fresh Approach and Host relating to the Market.

### **7.2 Amendment**

Except as provided in Section 1.4, this Agreement may be amended only as stated in and by a writing signed by both Fresh Approach and Host and which recites that it is an amendment to this Agreement.

### **7.3 Severability**

If a court of competent jurisdiction finds any term of this Agreement to be invalid or unenforceable, this Agreement will be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect.

### **7.4 Third Party Beneficiaries**

This Agreement is for the exclusive benefit of Fresh Approach and Host, and not for the benefit of any third party including, without limitation, any employee, Market attendee, or vendor of Fresh Approach or Host.

### **7.5 Governing Law**

This Agreement is governed by California law.