

THIS AGREEMENT made effective this 30 day of October, 2017

BETWEEN:

THE CITY OF EDMONTON
(the "City")

- and -

EDMONTON DOWNTOWN FARMERS' MARKET ASSOCIATION
(the "Licensee")

WHEREAS:

- A. The Licensee desires to use and occupy the Licensed Area for the purposes of hosting the Market in the manner stated in this Agreement; and
- B. The City is agreeable to licensing the use of the Licensed Area to the Licensee in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE in consideration of one (\$1.00) dollar and other good and valuable consideration (sufficiency and receipt of which is hereby acknowledged by the City) and the mutual covenants contained herein, the parties agree as follows:

Definitions

- 1. In this Agreement the following words and expressions have the meaning set forth unless inconsistent with the subject matter or context:
 - (a) "Alternate Licensed Area" means certain lands owned by the City as more particularly described in Schedule "B";
 - (b) "Citizen Services Designate" means the Citizen Services department staff member who is designated by the City as the point of contact for the Licensee;
 - (c) "City" means The City of Edmonton;
 - (d) "City Manager" means the City Manager or designate;
 - (e) "City's Risk Manager" means the City's Risk Manager, Financial and Corporate Services, or designate;
 - (f) "Department" means the Citizen Services department of the City;
 - (g) "Deputy City Manager" means the Deputy City Manager of the Citizen Services department;
 - (h) "Invitees" means the Licensee employees, sub-licensees, and sub-contractors who in any way participate in or assist with the Market;

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- (i) "License Term" means the term of the license as set out in Section 4;
- (j) "Licensed Area" means certain lands owned by the City as more particularly described in Schedule "A" ;
- (k) "Licensee" means the Edmonton Downtown Farmers' Market Association;
- (l) "Market" means a downtown farmers market operated by the Licensee;
- (m) "Notice" has the meaning set out in Section 8 herein;
- (n) "Services" means civic services provided by the City to the Licensee in connection with the operation of the Market; and
- (o) "Term" means the term of this Agreement, as set out in Section 2 herein.

Agreement and License Terms

2. The term of this Agreement is from October 14, 2017 to May 15, 2020, unless terminated earlier pursuant to this Agreement. The rights and obligations under this Agreement commence as of the commencement date of the Term, notwithstanding that the parties may execute this Agreement subsequent to such date.
3. The Licensee acknowledges that City Hall Public Space Use Policy C561A does not permit commercial activities in City Hall, and that City Administration will be seeking an exemption from this provision of Policy C561A from Edmonton City Council for the purposes of this Agreement. If an exemption is not granted by Edmonton City Council, this Agreement will be terminated by the City in accordance with the provisions of this Agreement.
4. The term of the licence granted herein is from 6:45 a.m. to 5:00 p.m. each Saturday within the following time periods:
 - (a) October 14, 2017 to May 12, 2018;
 - (b) October 13, 2018 to May 11, 2019; and
 - (c) October 12, 2019 to May 9, 2020.

Costs

5. Notwithstanding that this Agreement may reference specific costs and expenses to be borne by the Licensee, the Licensee shall be liable for all costs and expenses associated with the operation of the Market and the Licensee shall indemnify and hold harmless the City from any costs and expenses incurred as a result of the Licensee's use of the Licensed Area during the Term.
6. The City shall offer Services to the Licensee. Prior to commencement of the Market the City shall provide the Licensee with an estimate of costs for the Services. The Licensee shall confirm with the City the Services required and within ten days of receipt of the invoice from

the City for such Services, the Licensee shall make full payment to the City. All overdue payments for the Services shall be charged interest at the rate of 18 per cent per annum.

Use of the Licensed Area

7. The City grants to the Licensee and the Licensee accepts from the City, a licence for the occupation and use of the Licensed Area for the Term, except as otherwise set out in this Agreement.
8. The Licensee acknowledges that from time-to-time during the Term, the Licensed Area may not be available for the purpose of holding the Market. In that event, and upon written notice to the Licensee at least four (4) weeks prior to the affected Market date (the "Notice"), the City may cancel the Licensee's license to use and occupy the Licensed Area for one or more Market dates. In that case, whenever possible and at the sole discretion of the City, the City will permit the Licensee the occupation and use of the Alternate Licensed Area and such occupation and use will be subject to the same terms and conditions set out in this Agreement as for the occupation and use of the Licensed Area. This Agreement shall be deemed to be amended to reflect the changes as set out in the Notice, and such amendment shall be deemed incorporated into this Agreement immediately upon the City giving the Notice to the Licensee.
9. The Licensee shall use the Licensed Area solely for the purpose of holding the Market and for no other purpose whatsoever.
10. The Market will commence on October 14, 2017. The Licensee will have access to the Licensed Area from 6:45 a.m. to 5:00 p.m. The Invitees may arrive at the Licensed Area on the Saturdays during the Term from 7:00 a.m. onwards and must be completely vacated from the site by 5:00 p.m. The Market may be open for business to the public each Saturday for the hours of 9:00 a.m. to 3:00 p.m. during the License Term, subject to any cancellation of a Market date as set out in this Agreement.
11. The Licensee shall conduct the Market in a proper and orderly manner and shall conform with the City Hall Public Space Use Policy C561A (with the exception of the provision prohibiting commercial activities) and all reasonable instructions issued by or under the authority of the City Manager regarding the use of the Licensed Area and the Services provided by the City.
12. The Licensee shall have the non-exclusive right and license to place two (2) rolling metal storage containers (the "Containers") on the third (3rd) floor of the City Hall Parkade, or such other location within the City Hall Parkade as the City shall specify from time to time, during the entire period that the Agreement is in force. Such area shall form part of the Licensed Area for the purposes of the Agreement, however, such area shall be used only for the purpose of the placement of the Containers and for no other purpose whatsoever.

13. The Licensee shall have access to the Containers at such times in such manner as are communicated to the Licensee by the City from time to time.
14. The Licensee shall ensure that the Invitees are aware of the provisions of this Agreement and that there is no conflict between the provisions of this Agreement and the provisions of agreements entered into between the Licensee and such parties. The Licensee shall take reasonable steps to ensure that all Invitees comply with the provisions of this Agreement relating to the use of the Licensed Area.
15. The Licensee hereby represents and warrants that it has the legal capacity to execute this Agreement and carry out and observe the provisions herein to be performed by the Licensee and take all actions pursuant hereto and all necessary approvals by directors, shareholders or members of the Licensee, as the case may be, have been given to authorize the Licensee to execute this Agreement.
16. The Licensee shall not do or permit to be done anything which may cause default or cancellation of any insurance policy affecting the Licensed Area, its buildings or improvements.
17. The Licensee shall not do or permit to be done anything which might be deemed a nuisance or which may be contrary to any federal or provincial laws or to any of the bylaws of the City. For greater certainty, all sound levels required for the Market shall be in compliance with the City of Edmonton Community Standards Bylaw 14600, as amended.
18. The Licensee shall ensure that all food and goods outlets operating within the Licensed Area during the Market have all the necessary licences or permits as required by law.
19. The Licensee shall not permit the service of alcoholic beverages at the Market.
20. Properly authorized employees or agents of the City shall have access at all times to the Licensed Area. The Licensee shall provide parking for City staff vehicles as determined by the Department.
21. In the event of an emergency the right of entry of any personnel of a City department shall not be restricted in any manner whatsoever.
22. The Licensee shall procure and maintain, at the cost and expense of the Licensee, such licences, permits or approvals, from federal, provincial, municipal or other government authorities as may be necessary to enable the Licensee to conduct its business and shall carry on and conduct all activities pursuant to this Agreement in compliance with all federal, provincial and municipal laws, ordinances, rules, regulations, bylaws and codes.

23. The Licensee warrants that the use of all patented, trademarked or franchised material, literary, dramatic, artistic, cinematographic or musical works, whether by mechanical recording or personal rendition, (the "Material") during the Market, have been duly licensed or authorized by the owners of such Material and neither the Licensee's use of the Licensed Area nor any performance nor any other matter or thing in any way connected with the Licensee's activities under this Agreement will violate or infringe upon any copyright. By entering into this Agreement, the Licensee covenants and agrees to indemnify and hold harmless the City, its employees, agents and all those for whom it is in law responsible from any and all claims, losses, or expenses including legal fees, which may arise from the use of the Material.
24. The Licensee shall accept complete responsibility for payment of all remittances, fees and tariffs arising from the performance or use of literary, dramatic, artistic or musical works during the Market, including but not limited to those remittances, fees and tariffs charged by the Society of Composers, Authors and Music Publishers of Canada (SOCAN), the Audio Visual Licensing Agency (AVLA), the Canadian Musical Reproduction Rights Agency Limited (CMRRA) and the Society for Reproduction Rights of Authors, Composers and Publishers in Canada Inc. (SODRAC).
25. The City shall not be liable to the Licensee, its employees, agents, sub-licensees, contractors and invitees for any loss or damage sustained by the Licensee, its employees, agents, sublicensees, contractors and invitees if the City is unable to provide, supply, furnish any of the facilities, locations or Services set out herein as a result of any power failure, emergency, disaster, act of God, war, insurrection or other event beyond the control of the City.

Site Preparation and Restoration

26. Provided that a written schedule of pre event preparation and take-down work is provided to and approved by the Department, the Licensee shall be permitted access to the Licensed Area for site preparation for the holding of the Market, including the setting up of equipment, commencing no earlier than 6:45 a.m and removal of equipment no later than 5:00 p.m. on Saturdays during the Term. All equipment to be erected on the Licensed Area, and methods of erection and dismantling must be approved in advance by the Citizen Service's Designate.
27. Except in the case of termination due to an emergency as provided in Section 34 herein, upon expiry of the licensed period on each Saturday during the Term or sooner termination as provided herein, the Licensee shall vacate the Licensed Area ensuring that the Licensed Area is restored to its former condition as existed immediately prior the commencement of the licensed period on that Saturday to the satisfaction of the Citizen Services Designate and all take down operations are complete.

Security

28. The Licensee shall provide and bear the expense of adequate security measures as determined and required by the City.

Custodial

29. The Licensee shall provide and bear the expense of adequate custodial as determined and required by the City.

Repair

30. Throughout the Term the Licensee shall repair, maintain and keep the Licensed Area in a good state of repair and cleanliness to the satisfaction of the Department.

Indemnity

31. The Licensee shall indemnify and save harmless the City, its officers, employees, agents and servants, from any and all liabilities, damages, costs, suits or actions arising out of:

- (a) any breach or nonperformance of any covenants or conditions in this Agreement to be fulfilled, observed or performed by the Licensee;
- (b) any damage to property, real or personal, occasioned by the use and occupation of the Licensed Area; and
- (c) any injury to persons, including death, occurring on or about the Licensed Area or any part thereof or any damage to property belonging to the Licensee, or its employees, invitees, sub-licensees, or any injury to any employee, sub-licensee, or invitee of the Licensee while such property or person is in the Licensed Area;

excepting liabilities, costs, damages, claims, suits, expenses or actions arising from the negligent act or omission of the City, its officers, employees or agents.

This Section shall survive the expiration or termination of this Agreement.

Insurance

32. Throughout the Term, the Licensee shall maintain in full force and effect the following insurance coverage:

- (a) General Liability insurance protecting the City, the Licensee and their respective employees, agents and contractors against damages arising from bodily injury

- (including death), personal injury and claims for property damage which may arise directly or indirectly out of the operations of the Licensee, its employees, agents or contractors under this Agreement. The foregoing insurance shall not be less than two million dollars inclusive of any one occurrence.
- (b) In the event that liabilities, costs, damages, claims, suits, expenses or actions arise for which the above insurance coverage may apply, the Licensee, upon written direction by the City, shall direct the insurer to defend the City.
- (c) "All Risk" Property insurance for the full value of the property owned by or used by the Licensee, its agents and employees, in the Licensed Area for the purposes of the Market. Such policy shall contain a waiver by the insurer of any right of claim or recovery by way of subrogation or otherwise against the City, its employees, agents and servants.
- (d) The aforementioned insurance coverage shall be endorsed to provide the City with written notice of cancellation or material change and shall be in a form acceptable to the City's Risk Manager. Evidence of such policies shall be submitted to the City on the Certificate of Insurance form provided to the Licensee by the City and will be duly completed by the Licensee's broker and/or insurer. The Licensee's broker shall promptly supply certified copies of the policies if requested by the City's Risk Manager.
- (e) As an alternative to submitting the Certificate of Insurance, the Licensee or the Licensee's broker may provide a certified copy of the required policies and such policies shall be properly endorsed and in a form acceptable to the City's Risk Manager.
- (f) Upon request by the City, the Licensee shall provide additional insurance if this is deemed necessary by the City's Risk Manager.
- (g) The Licensee acknowledges that a breach of any requirement under this Section 30 shall be considered a fundamental breach of this Agreement, and the City may exercise any remedies available in the event of default by the Licensee.
- (h) The policy limits stated in Subsections (a) and (c) above do not define or limit the Licensee's liability to indemnify the City in the event of bodily injury or property damage, and neither does the City make any representations as to the adequacy of the limits or scope of coverage in the event of a claim.

Termination

33. If, in the opinion of the Citizen Services Designate, it would not be advisable to use or occupy the Licensed Area for the purposes of the Market for any reason whatsoever on one or more of the Market dates hereinbefore mentioned, then at the option of the City Manager this Agreement may be:
- (a) terminated by the Deputy City Manager upon giving the Licensee written notice of termination at least two weeks prior to the termination date;
 - (b) amended to postpone one or more of the Market dates to a new date and time that is agreeable to both parties; or
 - (c) at the sole discretion of the City, amended to cancel one or more of the Market dates. Such amendment shall be deemed incorporated into this Agreement immediately upon the City giving written notice to the Licensee of such amendment.
34. The Licensee shall have the right to terminate this Agreement upon giving the City written notice of termination at least two weeks prior to the termination date.
35. The City shall have the right to terminate this Agreement upon giving the Licensee written notice of termination at least thirty days prior to the termination date.
36. In the event of an emergency, the City, acting reasonably, reserves the right to require the Licensee and its Invitees to immediately vacate the Licensed Area upon providing the Licensee with oral or written notice.
37. The City shall not be liable for any damages or costs suffered by the Licensee, due to termination of this Agreement or reassignment of Market dates as provided herein.

Notice

38. Any notice required to be given under this Agreement shall be conclusively deemed to be sufficiently given if personally delivered, sent by facsimile or sent by prepaid registered mail addressed as follows:
- (a) In the case of the City, to:
 - Civic Events and Festivals
 - Main Floor City Hall
 - 1 Sir Winston Churchill Square
 - Edmonton, Alberta T5J 2R7
 - Fax: (780) 496-5618
 - ATTENTION: Tannia Franke

(b) In the case of the Licensee, to:

Edmonton Downtown Farmer's Market Association
Bill Rees YMCA
10211-105 Street,
Edmonton, Alberta T5J 1E3
ATTENTION: Market Manager

or to any other address as may be designated in writing by the City and the Licensee. Notice given by registered mail, if posted in Alberta, shall conclusively be deemed to have been received on the fifth business day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery.

Assignment

39. The Licensee shall not assign, subcontract or transfer this Agreement or any part thereof without the prior written consent of the Citizen Services Designate. Notwithstanding the foregoing, the Licensee may sublicense to vendors of food, beverage and goods consistent with the operation of a farmers' market, with the exception of vendors selling or sampling beer, mead, wine, spirits or coolers.

General

40. The recitals set forth herein form part of this Agreement.
41. This Agreement shall be construed and governed by the laws of the Province of Alberta and the laws of Canada applicable therein, and the parties shall attorn to the jurisdiction of the Province of Alberta.
42. Time is of the essence in this Agreement and therefore, whenever in this Agreement either the City or the Licensee is required to do something by a particular date, the time for the doing of the particular thing shall only be amended by written agreement of the City and the Licensee.
43. All contracts, whether of employment or otherwise, entered into by the Licensee with respect to this Agreement shall be made by the Licensee on its own behalf and not as agent of the City and the City shall have no liability for such contracts.
44. This Agreement, inclusive of Schedule "A", Schedule "B" and Schedule "C" attached hereto, is the entire agreement between the City and the Licensee with regard to the matters dealt with in it, and there are no understandings or agreements, representations, warranties, conditions or collateral terms, verbal or otherwise, existing

between the City and the Licensee except as expressly stated in this Agreement or as agreed in writing by the parties.


45. The Licensee acknowledges that the *Freedom of Information and Protection of Privacy Act* (Alberta), as amended, applies to all City information and records relating to, or obtained, created or collected under this Agreement.
46. If any provision of this Agreement is illegal or unenforceable for any reason whatsoever, it shall be considered separate and severable from the remaining provisions of this Agreement, which shall remain in force and be binding as though such provision had not been included.
47. The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this Agreement.
48. The waiver by the City or the Licensee of the strict performance of any term or condition in this Agreement shall not constitute a waiver of any other term or condition nor shall it be deemed a waiver of any subsequent breach of the same or of any other term or condition in this Agreement.
49. Except as otherwise set out in Section 8 and Section 31 herein, this Agreement shall not be modified, varied or amended except by the written agreement of the City and the Licensee.
50. This Agreement shall be binding upon the City and the Licensee and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective the day and year first above written.

Legally Reviewed and Approved
as to Form: ~~MHA~~ Margo Hoffner
for Deborah Fisher, Law Branch


THE CITY OF EDMONTON as represented
by the Branch Manager,
Community and Recreation Facilities,
Citizen Services

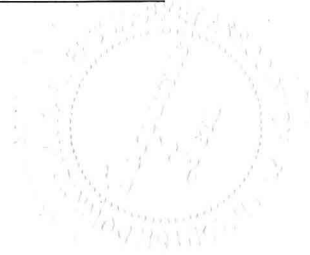
Approved As to Content: 
Nicole Poirier, Civic Events and Festivals

Per: 
Roger Devne

EDMONTON DOWNTOWN FARMERS'
MARKET ASSOCIATION (EDFMA)

Per: 
Sarb Dhaliwal
EDFMA Chair

Per: 
Dieter Kuhlmann
EDFMA Vice Chair



AFFIDAVIT OF EXECUTION

CANADA
PROVINCE OF ALBERTA
TO WIT:

I, _____, of the _____, in the Province of Alberta
[Name of witness who saw person sign agreement] [City or Town where witness lives]

MAKE OATH AND SAY:

1. THAT I was personally present and did see _____ named in the within instrument, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein;
2. THAT the same was executed at the City of Edmonton, in the Province of Alberta and that I am subscribing witness thereto;
3. THAT I know the said _____ and that person is in my belief the full age of eighteen years.

SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta, this ___ day of _____, 2017.

A Commissioner for Oaths in and for the Province of Alberta

Signature of Witness

AFFIDAVIT VERIFYING SIGNING AUTHORITY

CANADA
PROVINCE OF ALBERTA
TO WIT:

I, _____, of the _____, in the Province of Alberta
[Name of witness who saw person sign agreement] [City or Town where witness lives]

MAKE OATH AND SAY:

1. That I am an officer of or duly authorized agent for Edmonton Downtown Farmers' Market Association (the "Corporation")
2. That I am authorized by the Corporation to execute the attached Agreement without affixing a corporate seal.

SWORN BEFORE ME at the City of Edmonton, in the Province of Alberta, this ___ day of _____, 2017.

A Commissioner for Oaths in and for the Province of Alberta

Signature of the Agreement Signatory

Schedule "A": Plan of Licensed Area and Venue Layout

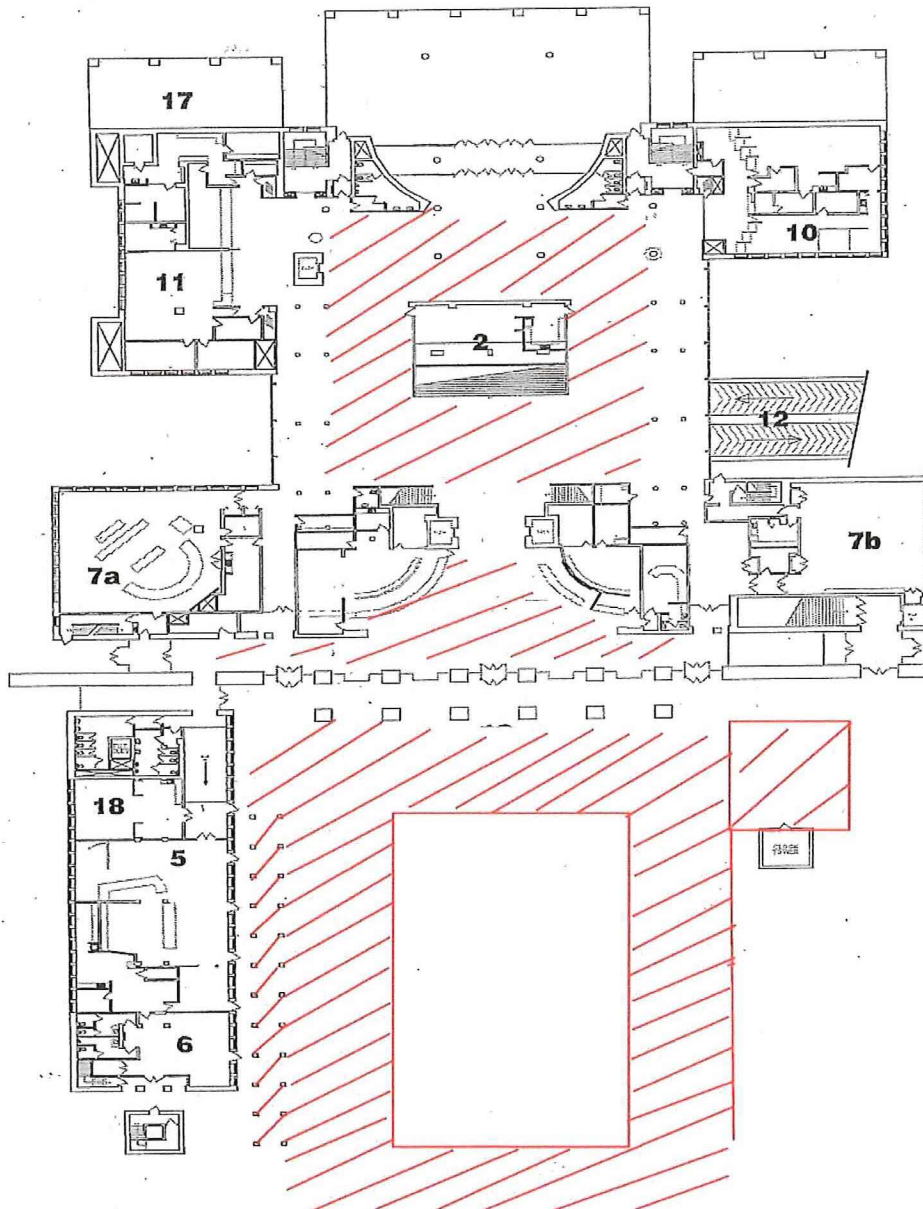
City Hall Main Floor

MAIN FLOOR



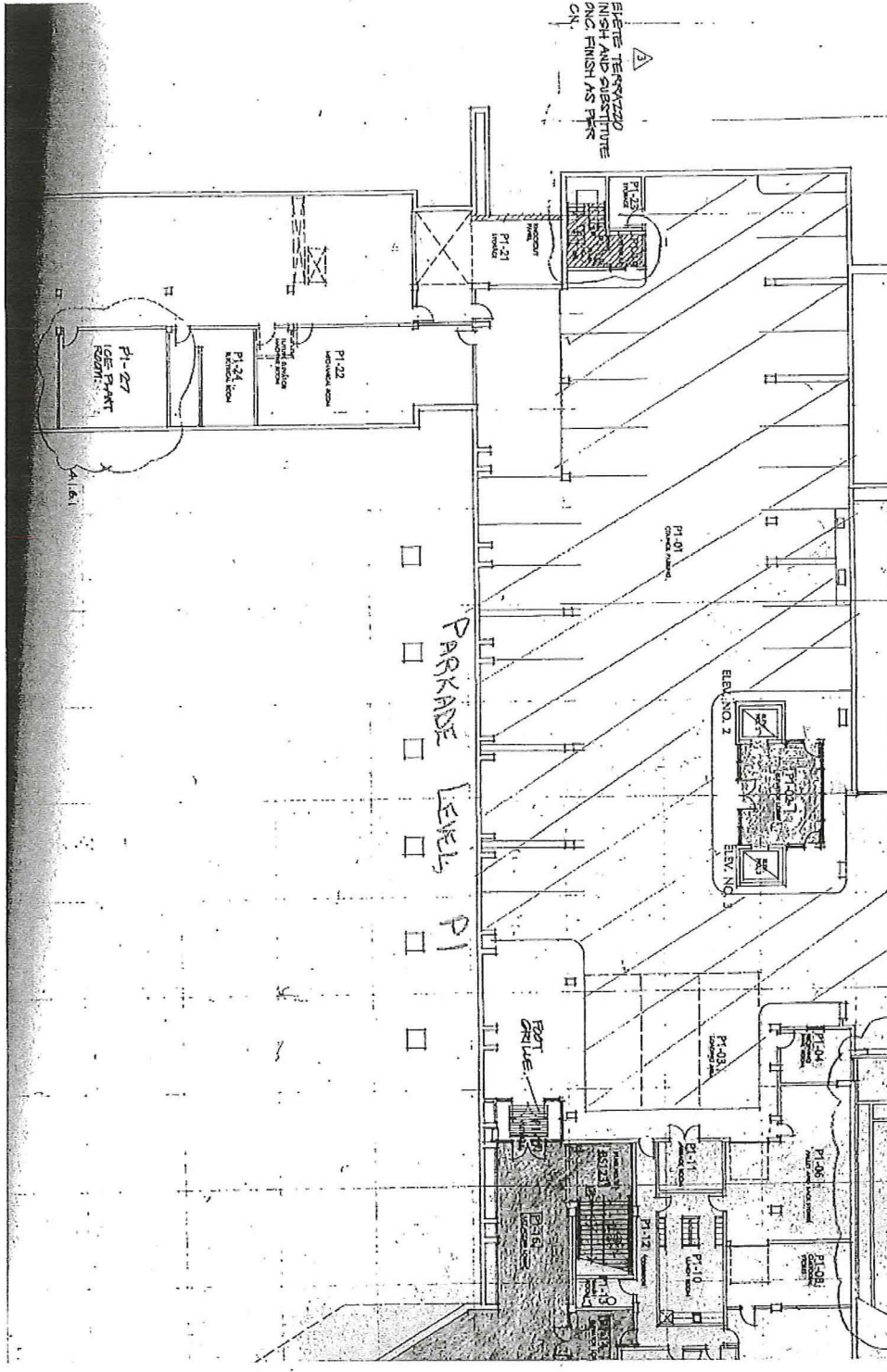
North 104 Avenue

West 100 Street



Plaza

Schedule "B": Plan of Alternate Licensed Area - City Hall Parkade Level P1



Schedule "C": Contacts

EDFMA

Contact for the Edmonton Downtown Farmers' Market Association

Administration

Diana Neubauer

Email: admin.edfma@gmail.com

Office: (780) 429-5713

Operations / Emergencies

Diana Neubauer

Market Manager

Cell: (780) 904-7914

Sarb Dhaliwal

EDFMA Chair

Email: dhaliwalnivas2012@yahoo.com

Dieter Kuhlmann

EDFMA Vice - Chair

Email: dietkuhl@gmail.com

CITY

Contact for the City of Edmonton

Tannia Franke

Civic Precinct Supervisor

Email: Tannia.Franke@edmonton.ca

Phone: 780-508-9103

Mobile: 780-719-1907

Amanda McDonald

City Hall Property Manager

Email: Amanda.McDonald@edmonton.ca

Phone: 780-496-6570

Mobile: 587-986-8517