

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into on the ____ of November, 2013, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky, created pursuant to KRS Chapter 67A (hereinafter "Government") and FARM AND GARDEN MARKET COOPERATIVE ASSOCIATION, INC., DBA LEXINGTON FARMERS' MARKET, a Kentucky corporation (hereinafter "Organization") with a mailing address of P. O. Box 553, Lexington, Kentucky 40588-0553.

WIT N E S S E T H:

WHEREAS, the Government recognizes the need to promote marketing of Kentucky products in order to support agricultural businesses within the Commonwealth and the public purpose which would be fulfilled by making public space and limited in-kind services available to the Organization at no cost; and

WHEREAS, the Government is willing to permit the use of the Cheapside Park/5/3 Bank Pavilion and certain adjoining public property to the Organization to operate a farmers' market for the sale of agricultural products and other related items.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt, mutuality, and sufficiency of which is hereby acknowledged by the parties hereto, agree as follows:

1. This Agreement shall be for an initial term of two (2) years commencing January 1, 2014, and is subject to automatic renewal for up to three (3) additional terms of one (1) year each, unless either party provides written notice to the other of its intent to cancel this Agreement at least sixty (60) days prior to expiration of the term. LFUCG may terminate this Agreement at any time and for any reason by providing Organization at least sixty (60) days advanced written notice. Either party may terminate this Agreement for cause by providing the other party with written notice after providing at least thirty (30) days to cure. All rights and obligations incurred by either party shall survive such termination.

2. The Organization agrees to provide the following services:

A. Manage and administer a Farmers' Market to be located within Cheapside Park/5/3 Bank Pavilion and certain adjoining public property as designated by agreement of the parties in order to provide marketing opportunities for Kentucky farmers and producers (hereinafter the "Farmers' Market"). This shall include the issuance of seasonal or other permits to use the Farmers' Market which shall vest in the permittee the privilege of entering on the premises and making use of the property for the purposes and period of time provided in the permit. Such permitting shall take into consideration appropriate space requirements and will be done in accordance with its policies as

set forth in Exhibit "A" (Bylaws of Organization/Producer Membership Agreement/Rules and Regulations), which is attached hereto and incorporated herein by reference as if fully stated.

B. Operate and administer the Farmers' Market in such a way as to provide opportunity for the greatest number of farmers/producers as possible and in a manner which is open and available to all qualified participants, as further defined by Organization's membership rules as set forth in Exhibit A and by others directly associated with the promotion of Kentucky products, Kentucky producers, or the health benefits of Kentucky agricultural products. Selection of participants shall be made without regard to participation in any other farmers' market or similar operation.

C. Ensure that all products are being sold or offered for sale only by Kentucky qualified participants or by members of their immediate family or by their representatives or agents. Notwithstanding the above, the Organization may allow up to five (5) non-qualified participants on any market day

D. Ensure that any purchased products offered for resale were either purchased from another grower, from an auction house within Kentucky offering products for sale from other growers, or from a wholesale terminal market operating under the U.S. Department of Agricultural, and that each such product offered for sale is labeled to indicate the source of the produce and the state of origin of produce grown out of state.

E. If requested by the Government, the Organization shall operate and administer the Artists' Market. The location, times of operation, and guidelines for participation will be further agreed to be the parties.

F. Submit a monthly report to the Government's Chief Development Officer or his or her designee by no later than the 15th calendar day of each month. Each report must contain a summary of the number of participants, fees received, and any other relevant activities regarding the income and management of the Farmers' Market for the preceding month.

G. Submit an annual report each year to the Mayor and Urban County Council, which report shall contain a summary of its activities with respect to the Farmers' Market for the preceding year, including but not limited to participation, revenues, marketing efforts, and administration.

H. Comply with all federal, state and local tax requirements and provide copies of relevant documents turns to the government upon request.

I. Comply with any and all federal, state and local safety and environmental laws, regulations and ordinances, especially all requirements of the Lexington-Fayette County Board of Health, and with all safety and loss control rules, regulations and policies of the Lexington-Fayette Urban County Government, Division of Risk Management, and permit the Division of Risk Management to review, audit, and inspect any and all of its records and operations to ensure compliance with the provisions of this Agreement. Organization shall keep and make available to Government any records related to this Agreement such as are necessary to support its performance.

3. The Government agrees to the following:

A. The Organization is authorized to impose, collect and retain a reasonable fee for each permit issued for participation in the Farmers' Market.

B. The Organization has the exclusive right to manage, administer, and regulate the use of the Farmers' Market, including posting reasonable signs within the public right-of-way to publicize it, each Saturday from 5:00 a.m. to 3 p.m. except during any 4th of July or other Government-sponsored event which falls on a Saturday. The Farmer's Market will primarily be located in Cheapside Park and the 5/3 Bank Pavilion. The public rights-of-way of West Short Street from North Mill Street to North Upper Street and of Market Street from West Short Street to Church Street and the sidewalk and parking spaces on the west side of North Upper Street from Short Street to Main Street shall also be included during the Sale Season, which is defined as the period of time from April 1 to December 31 of each year. Any necessary additional public space and parking for the non-"Sale Season", as well as any additional public space necessary for the Artists' Market, shall be agreed to by the parties. The final footprint of the Farmers' Market shall be attached as Exhibit "B" to this agreement and is incorporated herein by reference.

C. The Government shall allow the Farmers' Market to use the above-defined footprint for one (1) additional Special Event per calendar year, as further agreed to by the parties. The Government agrees to waive any normal fees related to the use of the area for said event and will provide the normal in-kind services for such an event as further described herein.

D. The Government will provide refuse and recycling pickup services for refuse, trash, or debris produced in the course of the operation of the Farmers' Market.

E. The Government will provide access to electrical service during the operation of the Farmers' Market.

F. The Government and/or its agencies will provide reasonable enforcement actions to ensure compliance with any parking space restrictions, including bagging meters to prohibit parking, issuing citations and/or towing illegally parked vehicles.

4 The Government may designate such persons as may be necessary to monitor and evaluate the services rendered by the Organization pursuant to this Agreement. The Government, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Organization, or to constitute Organization an agent of the Government.

5. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

6. The Organization agrees that all personal property of the Lexington Farmers' Market, its agents, employees, visitors, licensees, contractors or suppliers, in and on said Premises, shall be and remain at their sole risk, and that the Government shall not be liable to them for any damage to, or loss of, such personal property arising from theft or from any act of negligence of any other persons, or resulting from fire, explosion, falling plaster, rain or snow, or from the leaking of the roof, or from the bursting, leaking or overflowing of water, sewer or steam pipes, or from heating or plumbing fixtures or from electrical wires or fixtures, or from any other cause whatsoever. The Government shall not be liable to Lexington Farmers' Market for the interruption of Lexington Farmers' Market business or activities in any way, by reason of fire or other casualty, regardless of fault.

7. The Lexington Farmers' Market agrees that it shall indemnify, defend and save the Government, its agents, volunteers, employees, and elected or appointed officials harmless from any and all claims, demands, damages, actions, costs and charges to which the Government may be subject or which the Government may have to pay by reason of any injury to any person or property, or loss of life or property resulting from or in any way connected with, the character, condition, or use of the premises or any means of ingress thereto or egress there from covered by the Agreement unless such injury or loss arises solely from the negligence of the Government. The Lexington Farmers' Market shall at its own expense, assume the defense of such claims and actions for those damages arising out of such injuries or losses which may be brought against the Government by third parties and shall pay any such judgments that may be rendered in any such actions. All insurance policies shall be broad form in nature and shall be written through a company with an A. M. Best Rating of "A-" or better, admitted to do business in Kentucky, and the contract should be non-cancelable without at least thirty (30) days advance written notice by registered mail to the Government from the insurance company.

8. The Organization agrees to operate the Farmers' market in compliance with the Rules and Regulations attached hereto as Exhibit A, which are incorporated herein by reference as if fully stated.

9. The Organization agrees to provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex or age, shall promote equal employment and shall cause each of its sub-contractors to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

10. The Organization agrees to maintain and adopt a written sexual harassment policy, which contains a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for confidential investigation of all complaints. The policy shall be made available to all employees and clients and shall be posted at Organization's primary place of business.

11. Neither party may assign any of its rights and duties under this Agreement without the prior written consent of the other party.

12. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either the Government or the Organization.

13. If any term or provision of this Agreement shall be found to be illegal or unenforceable, the remainder of the agreement shall remain in full force and such term or provision shall be deemed stricken.

14. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

15. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

16. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____
Mayor Jim Gray

ATTEST:

Clerk of the Urban County Council

FARM AND GARDEN MARKET COOPERATIVE
ASSOCIATION, INC., DBA LEXINGTON FARMERS'
MARKET

ATTEST:

BY: Jeff Pallett
ITS: Executive Director

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