

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made and entered into on the 1st 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.

WITNESSETH:

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:

Martha Allen DEPUTY
Clerk of the Urban County Council

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

BY: _____

ITS: _____

Executive Director

00411161

2013 PRODUCER MEMBERSHIP AGREEMENT

This Membership Agreement (the "Agreement") is made by and between Farm and Garden Market Cooperative Association, Inc., d/b/a Lexington Farmers' Market (the "LFM") and _____ ("Producer Member").

In consideration of the marketing services to be provided by LFM, Producer Member agrees to comply with the following terms and conditions:

1. Producer Member Requirements

Producer Member represents and warrants that he or she produces agricultural products. Producer Member may manufacture value added products from said agricultural products. Producer Member's wares must consist over the market season of at least 75% of his or her own grown/raised agricultural products and value added products. The LFM may take crop failure into consideration.

Producer Member is interested in the objectives of the LFM and agrees to sign and comply with the Agreement.

Homegrown is defined as a horticultural product, or a value added product that is grown by or derived from a plant or animal grown by 1) a member of the Lexington Farmers' Market Cooperative (LFM), and 2) is grown from seed, transplants, or livestock which have been grown or purchased by a member of the LFM [Chickens- day old chicks or hens at the ready to lay stage, Beef- 120 days, Pork- from weaning], and is grown or fed on cropland, containers, pastures, feedlot, orchard, or similar facility that is owned, leased, rented and under the exclusive control of a member of the LFM.

2. Rights and Obligations

Producer Member shall have one vote. Producer Member may attend all producer member meetings and serve on the Board of Directors.

3. Term

The term of this Agreement shall commence upon its execution by both parties and shall extend until the following December 31. The Agreement shall thereafter automatically renew for successive one year terms unless and until notice is given by either party prior to December 31 that such party does not wish to renew the Agreement for the following calendar year; provided that if product offerings change from those specified in the Agreement, approval by the Board of Directors must be obtained.

4. Membership Fees

The Membership Fee shall be \$100.00. Producer Member may apply for up to 2 booth spaces. Booth Fees of \$100.00 for the first booth and \$200 for the second booth are to be paid, along with Membership Fee, by January 1st of each year.

Gate Fees of \$25.00 per booth, per day on Saturday and Sunday, and \$20.00 per booth, per day on Tuesday, Wednesday and Thursday shall be paid to LFM. Gate Fees will increase by \$5.00 per booth on Saturdays and Sundays during the months of June, July and August. A \$10 Gate Fee will be charged for the indoor market during the month of December.

5. General Criteria

Producer Member must be at least 18 years of age. Producer Member must be a resident of Kentucky and produce agricultural products in Kentucky.

6. Insurance

If selling value added or branded products, Producer Member shall have separate product liability insurance and shall obey all state and federal laws pertaining to canned or processed products, value added meats, eggs and similar products.

7. Permits

Producer Member shall attach copies of all required permits to this Agreement. Standard permits are Fayette County Health Department Permit and Retail Grocery Permit. Additional permits may include KDA Farmers' Market Sampling Certificate, GAP Certificate, HB391 and are required by law if Producer Member produces organic agricultural products, baked goods or other value added products. Required permits should accompany members to market and should be easily accessible if requested by market staff or other qualified personnel.

8. Weights and Measures

All produce sold at the LFM shall be sold by legal weights and measures. Producer Member is responsible for having scales that are certifiable by KDA. The use of non-certifiable scales is prohibited.

9. Labels/Signs

All product labels and signs must include: point of origin (where grown, not where purchased), product name and price per unit and must be on market approved signs, with the appropriate boxes showing whether the member produced the item or not, unless specific permission is sought and obtained from the Board of Directors. Also, the city or county of origin (fully spelled out) must be on all signs, no matter what other signs are being utilized. All value added or processed items shall have labels that state name, address, telephone number, ingredients and weight in accordance with applicable law. All labels on all products shall be in

accordance with state and federal law. All vendors using the term organic must follow federal regulations and, if annual sales exceed \$5,000.00, must be certified by a USDA accredited certification agency.

Members must display a farm/business sign at all markets. Members must be prepared to interact with market staff during both regularly scheduled and random booth inspections. If found not putting up proper signs, one warning is given. For blatant violations, a \$100 fee will be assessed upon the second warning and a third warning equates to dismissal from the market.

10. Value Added Products

Producer Member may represent other value added products so long as he or she complies with terms of this Agreement, any rules and regulations adopted by the LFM and the Articles and Bylaws of the LFM.

11. Crafts

A Producer Member satisfying the 75/25 rule may sell crafts if handmade by the Producer Member, and no kit was involved in the process. If painting, waxing or dying is involved, all must have been done by the Producer Member on an ingredient the Producer Member made or produced. All crafts must be juried by the Board of Directors or its representative. Plastics are prohibited except for use as a container.

12. Inspections/Receipts

Producer Member agrees to provide all necessary information for an inspection by LFM and understands that an inspection may occur at the Producer Member's farm or working location at any time within a season without notice. At the request of the Board of Directors or its representative, receipts must be provided to verify origin of product.

Products purchased and intended for resale at market must be accompanied by receipts and be made available to market staff upon request.

13. Dress Code and Vehicles

Producer Member and Producer Member's employees shall dress in clean and respectable clothing and shall not wear clothes that have slogans or symbols that will offend anyone's sexual, religious, political, or moral standards. Vehicles shall be reasonably clean both inside and out during market days.

14. Booths

Producer Member may apply for up to 2 booth spaces. Booth location is based upon seniority. Seniority is defined by number of continuous years of membership and use of the Market; number of sales days at the Market each year; number of weeks at the Market in each

year. Each booth space must be cleaned by the Producer Member before leaving. Booth(s) during business hours must be clean and attractive. All trash, boxes, unsold product, and the like must be removed by the Producer Member. For the Saturday market only, Producer Member must secure (unload, not set up) his or her space by 7:00 a.m. unless the Market Staff is otherwise informed. If the space is vacant at 7:00 a.m., the space may be assigned to someone else for the day.

15. Non-Transferability of Booth Space

Membership and booth space are not transferable; provided that in the case of death, disability or retirement, membership and booth space may be transferred to a surviving person who was a legal partner and owner of said business before death occurred or to a family member.

16. Hold Harmless Clause

The Producer Member shall hold the LFM, its Board of Directors and its officers, employees and other representatives harmless from any legal action, suit or claim regarding LFM or its policies and decisions and from any legal action or suit regarding physical injury or property damage, including without limitation, injury to the person, property or income of Producer Member, Producer Member's employees and Producer Member's customers.

17. Confidentiality

All Producer Members have the right to attend board meetings, request to view board minutes and financial statements. Producer Members shall not distribute such information to non-members.

18. Market Staff

The Executive Director is an employee supervised by the Board of Directors to execute the policies of the Board of Directors. The Executive Director will manage additional staff and represent the LFM in publicity, contractual, informational or community meetings, handle all paperwork, write approved grants, collect and deposit all fees, handle any conflicts, enforce LFM rules and regulations, maintain records, allocate booth spaces, facilitate farm inspections, inspect labels, maintain the physical area of the LFM in good condition and implement any other policy directive from the Board of Directors. Producer Member shall at all times cooperate with the Executive Director and comply with any requests made by Market Staff.

19. Producer Member Conduct

Discussing LFM business or policies or interfering with other vendors' right to conduct business during selling hours (for example, "hawking") is prohibited, including screaming that certain products are better or cheaper. Caustic emails or phone messages concerning LFM are prohibited. Nonpayment of fees; violations of permits, or dress code, parking, labels, or weights and measures requirements; interrupting other vendor's business or causing a public disturbance (except for safety of customers and vendors) shall be cause for Producer Member's membership

status to be automatically reviewed by the Board of Directors. Should Producer Member or any representative of Producer Member at any time occupy the premises in a manner contrary to this Agreement, upon request of Market Staff, the Producer Member or Producer Member's representative shall immediately cease such offending conduct. Failure to comply immediately as requested shall be cause for the termination of Producer Member's Agreement and vending rights and expulsion from the LFM Market. Upon termination, Producer Member shall promptly vacate the premises. Upon failure to vacate, the LFM may remove all property of Producer Member from the premises at Producer Member's expense. The LFM is relieved and discharged of and shall be held harmless by Producer Member from any legal action, suit or claim for loss or damage caused by such removal. The LFM shall not be responsible for storage or safekeeping of property so removed.

All suggestions, complaints or comments must be presented in writing to the Board of Directors or its representative, signed by the Producer Member and bearing the Producer Member's name, address and telephone number. No complaint, comment or suggestion will be handled during Market business hours.

If Producer Member's Agreement is terminated, Producer Member may appeal the determination. The Producer Member shall have 14 days from the date of receipt of the written determination to file a written appeal with the Executive Director. The Board of Directors (not including the Executive Director) or a committee of 3 board members appointed by the Board of Directors shall hear the appeal within 14 days of the receipt of the appeal letter. If the determination is reversed, the Producer Member's Agreement and vending rights will be immediately restored.

Intoxication by alcohol or drugs; any attempt by voice or body posturing to intimidate or threaten; terroristic or sexual threatening or bodily harm, representing the LFM without permission of the Board of Directors to the public; or failure to respond to the Board of Director's or its representative's directive shall automatically cause termination of the Agreement and immediate dismissal from the LFM.

The Producer Member is responsible for his or her employees complying with the terms of this Agreement.

20. In Case Of Emergency

Contact: _____

Home Phone: _____

Cell Phone: _____

21. Further Assurances

Producer Member represents that he or she has read the entire Agreement and understands its contents. Producer Member understands that the person who signs this Agreement will be responsible for representing Producer Member's business at all membership meetings and elections. Producer Member understands that if Producer Member does not comply with the Agreement that the Agreement may be terminated. Producer Member further understands and agrees that membership is at the discretion of the Board of Directors.

22. Product Offerings

The Producer Member's product offerings shall be attached to the current application, attached to this agreement, or updated as needed and on permanent file with the Lexington Farmers' Market:

In witness whereof, the parties have executed this Agreement as of the dates indicated below:

Producer Member

Name: _____ Date: _____

Signature: _____

(Please remember to initial the highlighted sections of the agreement, as failure to do so will result in a delay that might affect your seniority and voting privileges within the cooperative.)

Farm and Garden Market Cooperative Association, Inc.

By _____

Its: _____

Date: _____

YOU MUST HAVE

1. Your signed Producer Agreement (copy available upon request)
2. Copy of Product Liability Insurance
3. Copy of Retail Grocery Permit and Fayette County Health Department Permit
4. Copy of Organic Permit, if required
5. Copy of Micro-based processor permit or home processing permit, if required
6. Copy of all eggs, dairy, meat, and fish permits, if required.
7. A check for Annual Dues

