

## **Agreement for Food and Beverage Artisans Bloomington Community Farmers' Market**

This Agreement, entered into this \_\_\_\_ day of February, 2021, by and between the City of Bloomington Parks and Recreation Department ("Parks") and Food and Beverage Artisan ("Artisan"),

### **WITNESSETH:**

WHEREAS, Parks manages the Bloomington Community Farmers' Market ("Market") at Showers Common, 401 North Morton Street, Bloomington, Indiana; and

WHEREAS, the Food and Beverage Artisan wishes to operate a stand in this location.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

#### **A. TERM OF AGREEMENT**

The term of this Agreement shall begin on April 3, 2021 and end on November 20, 2021, 2020.

#### **B. FOOD AND BEVERAGE ARTISAN RESPONSIBILITIES**

1. **Artisan Fee:** Artisan shall pay Parks a vending fee of seven and a half (7.5%) of gross proceeds. The fee shall be paid monthly on or before the 15<sup>th</sup> of the month following the month gross proceeds were collected. In addition to the payment of seven and a half (7.5%) of gross proceeds, the Artisan shall include documentation of gross proceeds earned at each Market.
2. **List and Price:** The Artisan shall furnish Parks with a complete list of product to be sold and prices charged per item by April 2, 2021. Such product list and pricing is subject to the approval of the Parks Administrator. The Artisan must display legible price markers for goods offered for sale.
3. **Insurance:** The Artisan shall maintain comprehensive general liability insurance, which shall include premises, operations and product liability. Coverage shall be in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. The policy shall name the City of Bloomington and the Artisan as insured parties, and the Artisan shall provide Parks with a certificate of insurance prior to the commencement of operations under this Agreement. The Artisan and its insurer shall notify Parks within ten (10) days of any insurance cancellation.
4. **Employees:** The Artisan shall employ all personnel necessary for the operation of the food and beverage stand, and shall pay all necessary wages and payroll tax for

such employees. Artisan stand attendants must be a minimum of sixteen (16) years of age.

5. **Recordkeeping:** The Artisan shall keep and maintain accurate records reflecting the revenues of the food and beverage stand. These documents shall be open to inspection at all reasonable times by authorized agents of Parks.

On or before August 15, 2020 Artisan shall provide Parks with documentation regarding the sourcing of Indiana grown product for the 2020 season to date, including the types of products purchased and the names of the farms from which they were purchased.

6. **Rules and Regulations:** The Artisan shall also comply with all local, state and federal laws, including health codes regarding preparation of food, operation of open-air stand and employment of all personnel.

The Artisan shall obtain all necessary permits from Monroe County Health Department, Indiana Alcohol and Tobacco Commission, Federal Tax and Trade Bureau, Indiana State Excise Tax Police, and from any and all other controlling agencies or boards, prior to commencement of operations under this Agreement. Copies of pertinent permits shall be submitted along with the signed copy of the contract.

If the Artisan is selling as a Home Based Vendor, Artisan is responsible for ensuring all products are “non-potentially hazardous foods” and are required to have an analysis completed to determine if a product in question is indeed a “non-potentially hazardous food” and provide written report of said analysis.

7. **Days and Hours of Operation:** The Artisan agrees to attend and sell at Market on Saturday beginning April 3, 2021 through September 25, 2021 from 8:00 am until 1:00 pm, and October 2 2021 through November 20, 2021 from 9:00 am until 1:00 pm.
8. **Entering and Exiting the Market:** The Artisan must occupy the assigned space by 15 minutes prior to Market opening time. The Artisan may park along the curb next to B-Line plaza to unload. The vehicle must be removed from the curb by a schedule set in advance of the season.
9. **Assignments and Limits of Space:** The Artisan will be assigned by Parks one vending space limited to 10 feet wide by 10 feet deep prior to commencement of this Agreement. Artisans may only display signs, information and/or items in their space that consist of the products they are selling or that directly relate to their business.
10. **Gift Certificate Program/SNAP:** The Food Vendor agrees to participate in the Farmers’ Market Gift Certificate Program/SNAP (GCP/SNAP) organized by the

City. A Farmer/Food and Beverage Artisan Training Guide will be provided. The Artisan agrees to read the Training Guide and abide by the rules established in the Training Guide. Completion of a Substitute W9 form and Electronic Funds Transfer form is necessary for first-time participants in the GCP/SNAP. If the Artisan has participated in previous years, no further paperwork is necessary.

11. **Property Maintenance and Utilization:** The Artisan must vacate premises by 2:00 pm and remove all personal items and equipment. The Artisan must remove all recyclable and compostable materials from site. The Artisan must protect brick pavers within vending space from soiling due to food and beverage spills. The Artisan must ensure that weather protection devices are securely anchored. The Artisan must utilize compostable serving materials whenever possible.
12. **Indemnification:** The Artisan hereby agrees to indemnify, defend and hold harmless, the City of Bloomington, Indiana, its employees, agents and officers, including the members of the Farmers' Market Advisory Council and the Board of Parks Commissioners, from and against any and all actions, costs, claims, suits, losses, expenses or damages ("Claims"), including but not limited to attorney fees and court costs, which may arise as a result of the Artisans participation in the Market, whether or not sounding in tort or contract, and whether or not caused by a negligent act or omission of the City of Bloomington, its employees, agents or officers, or the members of the Farmers' Market Advisory Council or Board of Parks Commissioners.
13. **Verification of New Employees' Immigration Status:** The Artisan is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). The Artisan shall sign an affidavit, attached as Exhibit A, affirming that the Artisan does not knowingly employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

The Artisan and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Artisan or subcontractor subsequently learns is an unauthorized alien. If the City obtains information that the Artisan or subcontractor employs or retains an employee who is an unauthorized alien, the City shall notify the Artisan or subcontractor of the contract violation and require that the violation be remedied within 30 days of the date of notice. If the Artisan or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Artisan or subcontractor did not knowingly employ an unauthorized alien. If the Artisan or subcontractor fails to remedy the violation within the 30 day period, the City shall terminate the contract, unless the City or City department that entered into the contract determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a

new contractor. If the City terminates the contract, the Artisan or subcontractor is liable to the City for actual damages.

The Artisan shall require any subcontractors performing work under this contract to certify to the Artisan that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. The Artisan shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

14. **Artisan Behavior and Commitment to the City of Bloomington's Values and the Market's Mission.** The City of Bloomington considers diversity a source of strength that adds to Bloomington's character. The Bloomington Community Farmers' Market, as a program of the City, works to create an environment where all can feel welcome and safe regardless of race, religion, color, national origin, ancestry, sex, disability, sexual orientation, gender identity, veteran status, housing status or familial status. As a party to the 2021 Bloomington Community Farmers' Market Food and Beverage Artisan Agreement, artisans shall collaborate with each other and the City, assisting in creating a welcoming environment for all who attend the Market and shall represent themselves in a professional manner that reflects their commitment to the Market's mission and customer satisfaction. Behavior outside of the Market that relates to the Market must not reflect poorly on the Market or the reputation of the City and must be consistent with the mission and goals of the Market.

Artisans acknowledge that the City of Bloomington prohibits its employees from engaging in harassment or discrimination on the basis of sex, race, religion, color, national origin, ancestry, disability, gender identity, sexual orientation, housing status or veteran status, including harassing or discriminating against artisans at the Market. If an artisan believes that the City employee engaged in such conduct at the Market towards the artisan, the artisan may file a complaint with the Market Manager and/or with the City Human Resources Department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct at the Market.

Similarly, the City does not tolerate Artisans engaging in harassing or discriminatory conduct towards fellow vendors, members of the public or City employees at the Market on the basis of sex, race, religion, color, national origin, ancestry, disability, gender identity, sexual orientation, housing status or veteran status. Any artisan who believes that a fellow vendor has engaged in such harassment or discrimination at the Market may file a complaint with the Bloomington Human Rights Commission. The City takes all such complaints seriously and will take appropriate action if it finds that any artisan engaged in such prohibited conduct at the Market.

15. **Expectations**

Artisans shall not be discourteous, disrespectful or dishonest to anyone with whom they interact at the Market, including Market customers and attendees, other vendors, staff, volunteers, entertainers or anyone else at the Market.

Conduct at the Market on the part of the artisan that the City deems to be contrary to the provisions of the artisan agreement may result in administrative action in accordance with the provision of the agreement, including but not limited to suspension or ejection from the Market and/or future Market events.

Artisans shall notify the Market Manager or Market Supervisor immediately of any unsafe conditions.

Artisans shall cooperate with the City to take all reasonable measures to ensure that the Market remains a welcoming inclusive and safe venue.

Artisans understand that the Market is not a forum for political or religious activities, except for at Plaza A and Info Alley.

The City provides the Market as a location for artisans to sell what they create. Artisans understand that by providing the Market, the City is making no guarantee of the number of customers or the volume of business.

#### **C. RESPONSIBILITY AND RIGHTS OF PARKS**

Parks shall not invoice the Artisan for seven and a half (7.5%) of gross sales.

The City retains the right to terminate the Market, or to change the times, dates, locations, and/or policies related to the Market, at its sole discretion, whenever the City finds that it is in the public interest to do so. The City will make reasonable efforts to provide adequate notice of changes, and cancellations to all artisans.

#### **D. ASSIGNMENT OF AGREEMENT**

The Artisan shall not assign or sub-contract this Agreement or any of its terms, except with prior written approval of the Parks Administrator.

#### **E. BREACH OF AGREEMENT**

In the event one of the parties to this Agreement breaches any of its terms and conditions, the non-breaching party shall serve written notice of the breach to the other party by certified mail. The offending party shall then have seven (7) days from the date of mailing in which to cure the breach. If the offending party fails to cure the breach within seven (7) days, the non-breaching party may, at its option and in writing, unilaterally terminate the Agreement.

#### **F. TERMINATION**

1. **Termination by mutual agreement:** The parties may terminate this Agreement prior to November 20, 2021 by mutual written agreement.

#### **G. MISCELLANEOUS**

1. **Enforcement:** In the event that either party must resort to litigation in order to enforce the terms of this Agreement, the party found to be in breach of the

Agreement shall bear expenses of such litigation, including, but not limited to, court costs and reasonable attorney fees.

2. **Governing Law and Venue:** This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.
3. **Waiver:** No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the other party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.
4. **Safety:** The possession of alcoholic beverages, drugs and other illegal controlled substances, fireworks, air rifles, paintball guns, bow and arrows, cross bows, swords, and pellet guns is strictly prohibited in any park or park facility. Pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction.
5. **Covid-19**  
The Parties understand and agree that due to the ongoing COVID-19 pandemic, there may be limitations and restrictions enacted that will affect the ability of the Parties to perform as required under this Agreement. The Parties agree that, in the event a limitation or restriction is enacted which prevents performance of the terms of the Agreement, Parks may terminate the Agreement in its sole discretion if it determines that there is no reasonable alternative means of performance under the Agreement. Parks shall notify Food and Beverage Artisan of any such termination and the reasons therefor in writing.
6. **Notices:** Any notice required by this Agreement shall be made in writing to the addresses specified below:  
  
**Parks:** Parks and Recreation Department  
ATTN: Leslie Brinson  
City of Bloomington, P.O. Box 100  
Bloomington, IN 47402  
  
**Food and Beverage Artisan:**
7. **Intent to be Bound:** Parks and the Artisan each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.
8. **Integration and Modification:** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between

Parks and the Artisan. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

This Agreement may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first set forth.

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Philippa M. Guthrie, Corporation Counsel

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Paula McDevitt, Parks Administrator

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Kathleen Mills  
President Board of Park Commissioners

READ ONLY

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

The undersigned, being duly sworn, hereby affirms and says that:

- Signature

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires:

County of Residence: \_\_\_\_\_