

**LICENSE AGREEMENT BY AND BETWEEN**

**CITY OF PORTLAND**

**AND**

**PORTLAND FARMERS' MARKET ASSOCIATION**

**THIS LICENSE** made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **CITY OF PORTLAND**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "**CITY**") and **PORTLAND FARMERS' MARKET ASSOCIATION**, with a mailing address of c/o Hanne Tierney, Chair, 74 Dogtown Road, Palmyra, ME 04965 (hereinafter "**LICENSEE**").

**W I T N E S S E T H:**

**WHEREAS**, **LICENSEE** has been conducting a farmers' market using space on City property, and **CITY** desires to provide space to **LICENSEE** for that purpose; and

**WHEREAS**, **CITY** recognizes **LICENSEE** as being responsible for the coordination, implementation, and administration of all of the Farmers' Market Vendors (hereinafter "Vendors") at the Portland Farmers' Market; and

**WHEREAS**, the **CITY** is willing to permit such use in conjunction with the Portland Farmers' Market so long as adequate protections are maintained for the **CITY** and its citizens;

**NOW THEREFORE**, the parties do hereby agree as follows:

**1. Permit for Use of City Property.**

**CITY** agrees to permit **LICENSEE** to operate an outdoor farmers' market as follows:

- (a) On Wednesdays from April through November from 7am – 2pm in Monument Square and Monument Way, the Farmers' Market shall be the primary use of Monument Square. From December through March, the Farmer's Market location may be relocated to accommodate other activities.

- (b) On Saturdays from April through November from 7am to Noon in Deering Oaks Park on Farmers' Market Road and Jenny Lane.
- (c) Vendors at the Farmers Market may arrive two hours prior for set-up and may remain two hours after for break-down.

**2. Permit for Markets' in the R-6 Residential Zone.**

CITY agrees to permit LICENSEE to operate an indoor farmers market from November – April on Saturdays from 8am-2pm in community halls located in the R-6 Residential Zone.

**3. Products to be sold.**

- A. In addition to fruit, vegetables, flowers, seedlings, and plants, the following items may be sold at the Farmer's Markets, provided the product is produced, processed, or manufactured in an establishment licensed by the Department of Agriculture to produce the item and that the seller had produced, or processed, or manufactured the item:
  - a. Farm fresh eggs, provided they are stored at forty-five (45) degrees Fahrenheit during transport and display.
  - b. Honey, jams, jellies, pickles, relishes, maple syrup, apple cider, packaged herbs or herb blends and pesto.
  - c. Fresh meat and meat products, and fresh poultry and poultry products, provided that they are stored at or below forty (40) degrees Fahrenheit during transport and display at the public market.
  - d. Frozen meat and meat products, and frozen poultry and poultry products, provided that it is stored such that it remains frozen during transport and display at the public market.
  - e. Pasteurized and Not Pasteurized milk and milk products labeled and stored in compliance with Maine State Law.
  - f. Cheese, provided that it is stored at or below forty (40) degrees Fahrenheit during transport and display.
  - g. Raw or spun fiber.
  - h. Hard cider, as defined in 28-A M.R.S.A. § 2 and any amendments thereto, provided however that the producer has a farm winery license; malt liquor and wine, produced subject to the provisions of 7 M.R.S.A Sec. 415, and any amendments thereto.
- B. The following items may be sold, provided that the total amount of sales from all such items does not exceed 49% of the total amount of sales made by the licensee at the Farmer's Markets:
  - a. Any other edible produce that is a derivative of local plants or produce grown by any Vendor, provided that the Vendor holds the necessary license from the Department of Agriculture to produce such item(s). It is the intention that the Vendor would be allowed to produce and sell such items such as fruit pies,

bread, squares and fruit filled cookies derived in whole or in part from the products grown on their farm. It does not allow for the sale of such items as rice crispy squares, chocolate chip cookies, chocolate fudge, or brownies, to name a few.

- b. Any baked goods eligible to be sold at the public market must be individually or collectively wrapped while displayed and sold.
- c. The sale of any potentially hazardous foods, which includes any perishable food or food products which consists, in whole or in part, of milk or any other ingredient capable of supporting rapid and progressive growth of infectious and toxigenic microorganisms, including but not limited to, cream fillings in pies, cakes or pastries, custard products, meringue topped bakery products, or butter cream type fillings in bakery products, will not be allowed.

**4. Conditions.**

- A. **LICENSEE** agrees to maintain the premises in a clean and orderly fashion and to remove from the premises all trash and debris resulting from vending activities.
- B. **LICENSEE** agrees to maintain the activities of the Farmers' Market in a peaceful and orderly fashion.

**5. Term.**

This Agreement shall be effective from the date of execution through March 31, 2018 with the option for an annual renewal of the five (5) year term, unless this License is sooner terminated by either **LICENSEE** or **CITY**, as provided herein.

**6. Fees**

**LICENSEE** agrees to pay to **CITY** a fee in the amount of one hundred dollars (\$100) per Vendor per year for the right to use City property as described in paragraph one (1) above. The number of Vendors shall be determined at the annual meeting of the **LICENSEE** and a list of Vendors shall be submitted to the City annually with the lease payment. Additional Vendors may be added by **LICENSEE** during the license year by submission of additional Vendor names and corresponding annual Vendor fees to the City Clerk. The annual Vendor fee paid by **LICENSEE** for each Vendor shall be the only fee or charge required by the City in order for a Vendor to participate in a Farmers Market under paragraphs 1 and 2 above. In addition, there shall be a thirty five dollars (\$35) initial application fee paid by **LICENSEE** for this License, and a twenty five dollar (\$25) fee per annual renewal. The initial application fee and annual renewal fees will be due and payable on or before March 31<sup>st</sup> of each year. No refunds shall be granted in the event of early termination of this License.

For the term of this agreement as defined by paragraph five (5) above, **CITY** will credit **LICENSEE** for the amount of fees received by the **CITY** on the date of execution from currently licensed Vendors. The list of currently licensed Vendors is attached hereto as Exhibit

1. **LICENSEE** shall also credit the Vendors listed in Exhibit 1 for the amount of the license fee already paid.

**7. Repairs and Maintenance**

**LICENSEE** represents that it has inspected and examined the **PREMISES** and accepts them in their present condition, and agrees that **CITY** shall not be required to make any improvements whatsoever in or upon the **PREMISES** or any part thereof **LICENSEE** agrees to keep said **PREMISES** safe and in good order and condition at all times during the term hereof, and upon expiration of this License or any sooner termination thereof, **LICENSEE** will quit and surrender the possession of the **PREMISES** quietly and peaceably and in as good order and condition as they were at the commencement hereof, reasonable wear, tear, damage by the elements, and damage by third parties other than **LICENSEE** and Vendors, excepted; **LICENSEE** further agrees to leave the **PREMISES** free from all nuisance and dangerous or defective conditions not in existence at the commencement of this License and attributable to **LICENSEE**'s operations.

**8. Assignment**

This License may not be assigned without the prior written consent of the City Manager, provided that this limitation on assignment shall not limit the authority of **LICENSEE** to permit duly authorized Vendors to use stalls within the Farmers Markets with authority of **LICENSEE** as permitted by this Agreement.

**9. Management of Association**

Management of the Association shall be pursuant to Bylaws and Rules and Regulations which are not inconsistent with the City's ordinance. Any changes to the **LICENSEE**'s Bylaws and/or Rules and Regulations shall be reviewed and approved by the City Clerk's office. The current Associations Bylaws and Rules are attached hereto as Exhibit 2

**10. Management of Vendors**

**LICENSEE** shall require each Vendor to submit an application to use stalls at the Farmers' Market, said application form to be mutually agreed upon by the parties. **LICENSEE** shall obtain and maintain a copy of any required state licenses and certificates of insurance from its Vendors and shall keep them with the Vendor's application. **CITY** shall have the right to inspect **LICENSEE**'s Vendor files in regard to applications and licensing.

**11. Insurance**

A. **LICENSEE** shall require each Vendor to submit to **LICENSEE** with its application a certificate of insurance demonstrating that Vendor has in effect a policy of general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage naming the City and **LICENSEE** as additional insureds thereon, in this way: certificate must say either: A) "the policy actually been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to

the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Expansion Endorsement, by which the City of Portland is, in fact, automatically made an additional insured." A Certificate which merely has a box checked under 'Addl Insr,' or which merely states The City of Portland is named as an Additional Insured, will not be acceptable.

**Comment [A1]:** I've added this text; from my parallel requirement in City contracts

B. **LICENSEE** shall obtain comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage naming the **CITY** as additional insured thereon, in this way: certificate must say either: A) "the policy actually been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Expansion Endorsement, by which the City of Portland is, in fact, automatically made an additional insured." A Certificate which merely has a box checked under 'Addl Insr,' or which merely states The City of Portland is named as an Additional Insured, will not be acceptable.

**Comment [A2]:** I've added this text; from my parallel requirement in City contracts

. Said insurance shall include contractual liability coverage applicable to **LICENSEE**'s indemnification obligations under paragraph 12 hereof. A certificate evidencing such coverage shall be provided to **CITY** at commencement of the License term. Such insurance shall be on an occurrence or claims made basis. If the insurance is provided on a claims made basis, in the event of termination of this License, **LICENSEE** shall purchase a tail for such insurance for a minimum of three (3) years from the date of termination.

## 12. Indemnification

**LICENSEE** shall defend, indemnify and hold harmless the **CITY** and **CITY**'s officers, elected officials, and employees, from and against any and all claims, demands, suits, expenses (including reasonable attorney's fees) and judgments by or on behalf of any person or entity, arising out of **LICENSEE**'S use or occupancy of the **PREMISES** under this License. Without limiting the generality of this Article, **LICENSEE** expressly agrees to defend, indemnify and hold harmless the **CITY** from and against the following:

**Comment [A3]:** I recommend the City reject this deletion.

A. Employee Claims. Claims of **LICENSEE**'S employees or their estates for workplace-related injuries or death sustained on the **PREMISES** during the course of such employees' employment, including a waiver of subrogation for claims of such workers' compensation insurance carriers pursuant to 39-A M.R.S §107, as amended.

B. Other Claims. Claims of any person, entity or estate for personal injury, property damage, or death occurring on or from the **PREMISES** and arising out of the business operations on the **PREMISES of LICENSEE, and its officers and employees.**

C. **LICENSEE**'s indemnification obligations under this paragraph 12 shall be limited to the scope and limits of the insurance coverage provided by **LICENSEE** under paragraph 11.B.

This Section and Section 9 shall survive termination of this License and all insurance hereunder shall be primary to any insurance or self-insurance of **CITY**.

**13. Revocable License**

This License may be revoked by **CITY** at any time after providing **LICENSEE** with at least one (1) year prior written notice, a statement of reasons for revocation, and an opportunity for hearing. **LICENSEE** shall have the opportunity to have the intended revocation reviewed by the City Manager by providing notice to the City Manager within thirty (30) days of notice of a decision to revoke this License. **LICENSEE** shall have the right to appeal any decision to revoke this License by the City Manager to the Mayor and City Council by providing written notice to the Mayor within thirty (30) days of the receipt of a decision by the City Manager to revoke this License.

**14. Default**

In the event that **LICENSEE** shall be in default of any payment of any fees, or fails to obtain and/or maintain all required licenses, or is in default in the performance of any of the terms or conditions herein agreed to be kept and performed by **LICENSEE**, following written notice of such default and a sixty (60) day opportunity to cure, then **CITY** may terminate and end this License upon thirty (30) days prior written notice, and thereafter **CITY** may enter upon said **PREMISES** and remove all persons and property thereon under the authority of this License. **LICENSEE** shall be liable to **CITY** for all costs incurred by it as a result of the **LICENSEE**'s uncured default and **LICENSEE** shall pay all costs of collection incurred by **CITY**, including reasonable attorney's fees. **LICENSEE** shall have the right to appeal any decision to terminate this license under this paragraph fourteen (14) to the Mayor and City Council by providing written notice to the Mayor within thirty (30) days of receipt of the notice of termination hereunder.

**15. Hold Over**

In the event that **LICENSEE** shall hold over and remain in possession of the **PREMISES** with the consent of the **CITY**, such holding over shall be deemed to be from month to month only, and upon all the same terms and conditions as contained herein.

**16. Notices**

Any notices which are required hereunder, or which either **LICENSEE** or **CITY** may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid, return receipt requested, addressed to Portland Farmers' Market Association c/o Hanne Tierney, Chair, 74 Dogtown Road, Palmyra, ME 04965 or addressed to City of Portland, City Manager, 389 Congress Street, Portland, ME 04101.

**17. Waiver**

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

**18. Compliance with Laws**

Each party agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the **PREMISES** and the use thereof, including without limitation all laws regarding non-discrimination and equal employment opportunity.

**19. Successors and Interest**

All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of **LICENSEE** and **CITY** respectively, herein.

**IN WITNESS WHEREOF**, the said **CITY OF PORTLAND** has caused this License Agreement to be signed in its corporate name and sealed with its corporate seal by Mark Rees, its City Manager, thereunto duly authorized, and **PORTLAND FARMERS' MARKET ASSOCIATION** has caused this License to be signed by \_\_\_\_\_, its \_\_\_\_\_ as of the day and date first set forth above.

**WITNESS:**

**CITY OF PORTLAND**

\_\_\_\_\_

By: \_\_\_\_\_  
Mark Rees  
Its City Manager

**PORTLAND FARMERS'  
MARKET ASSOCIATION**

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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