

**FACILITIES USAGE AGREEMENT
BETWEEN
CITY OF BURLESON
AND
BURLESON FARMER'S MARKET**

This AGREEMENT is made by and between the City of Burleson, Texas ("City") and Burleson Farmer's Market ("BFM"). City and BFM may sometimes hereinafter be referred to individually as a "Party" or collectively as the "Parties."

WHEREAS, City is the owner of the area of land hereinafter called "Mayor Vera Calvin Plaza in Old Town" and/or "promenade"); and

WHEREAS, BFM desires to enter into an agreement so that BFM may use a portion of the Mayor Vera Calvin Plaza in Old Town (promenade) for the purpose of a farmer's market; and

WHEREAS, City and BFM have determined that such an agreement would benefit both parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
Appointment and Exclusivity**

- 1.01 The City hereby designates, appoints and authorizes BFM to be the only renter of the designated space included as Attachment 1 as agreed upon Saturday morning times. BFM hereby accepts such appointment and agrees to discharge its responsibilities as provided herein during the term of this Agreement. It is agreed and understood, however, that the City remains the owner of the property.

**Article II
Rights and Duties of BFM**

- 2.1 BFM will have the right to conduct the farmer's market activities on the above-mentioned property upon this agreement's execution beginning July 11, 2020 until December 12, 2020. The hours of operation shall be limited to between 7:00 AM and 1:00 PM on Saturdays.
- 2.2 BFM will have rights to operate one (1) market a month on a Sunday rather than a Saturday at their discretion. When a Sunday market is held, that market takes the place of the Saturday market for that week. Coordination between BFM and the city will ensure there are no conflicting events when a Sunday market is proposed.

- 2.3 BFM will have the right to operate a market on a Sunday in the event that a Saturday market is cancelled due to inclement weather. Coordination between BFM and the city will ensure there are no conflicting events when a Sunday market is proposed.
- 2.4 BFM shall cease operation of any particular date at the request of City with at least 10 days' notice.
- 2.5 BFM acknowledges that the parking spaces located along Warren St. are public parking and may be occupied upon arrival for set-up. In the case that vehicles are parked within spaces BFM intends to utilize, the City shall have no requirement to cause removal of any vehicles. If a vehicle is parked within the market area, BFM shall set-up the market in a way that the vehicle is not impeded from exiting.
- 2.6 BFM is responsible for submitting a revised site layout for the Farmer's Market seasonal use permit application. This permit is required to be approved prior to the use of the promenade affiliated with the Mayor Vera Calvin Plaza in Old Town.
- 2.7 BFM agrees to keep and restore the utilized area to an equal or better condition than that prior to any activities. This includes trash and debris pickup. BFM will make any and all repairs to used space under this Agreement that may be necessary to repair or restore any damage caused by BFM, its officers, agents, employees or invitees.
- 2.8 BFM acknowledges that generators of any kind shall not be permitted. Electrical hookups are provided and available within the Mayor Vera Calvin Plaza in Old Town and may be utilized as needed.
- 2.9 BFM shall comply with all local, state, and federal regulations. This includes regulations of the Tarrant County Public Health office.

Article III Terms

- 3.1 The City and BFM agree that upon BFM's payment of Two hundred fifty dollars (\$250.00) per day that the market operates. BFM shall receive access to the Mayor Vera Calvin Plaza promenade as mentioned beginning July 11, 2020.

- 3.2 BFM shall be required to pay Two Hundred Dollars (\$200.00) as a clean-up fee in the case that the property is not restored to the condition prior to activities. The fee shall be assessed at the City's discretion.
- 3.3 BFM shall ensure the compliance and abidance of vendors to the vendor rules and code of conduct as stated on www.burlesonfarmersmarket.com.

Article IV
Insurance and Hold Harmless

- 4.1 BFM agrees to provide City a certificate of insurance as proof that it has secured and paid for a policy providing general liability insurance covering all risks related to the use, maintenance, existence or location of the areas used under this Agreement. The amounts of such insurance shall not be less than \$1,000,000.00 for personal injury or death, each occurrence. The certificate of insurance shall be provided to the City prior to the issuance of any permit and any usage of the City's property.
- 4.2 City shall be named as an additional insured under the above-described policies, and each such policy shall contain endorsements waiving subrogation rights against City and providing that such policies may not be cancelled unless City is provided with written notice of such intent to cancel at least thirty (30) days prior to any such cancellation. Each such insurance policy shall be procured from a company authorized to do business in the State of Texas and shall be satisfactory to City. BFM shall provide evidence satisfactory to City that such coverage has been procured and is being maintained at all times during the term of this Agreement.
- 4.3 **BFM SHALL, AT ITS SOLE COST AND EXPENSE, INDEMNIFY AND HOLD HARMLESS CITY AND ALL ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ANY OFFICER, EMPLOYEE, OR OFFICIAL OF THE CITY OF BURLESON, TEXAS (HEREINAFTER REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ANY AND ALL LIABILITY, OBLIGATIONS, DAMAGES, PENALTIES, CLAIMS, LIENS, COSTS, CHARGES, LOSSES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND CONSULTANTS), WHICH MAY BE IMPOSED UPON, INCURRED BY OR BE ASSERTED AGAINST THE INDEMNITEES BY REASON OF ANY ACT OR OMISSION OF BFM, ITS PERSONNEL, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, RESULTING IN PERSONAL INJURY, BODILY INJURY, SICKNESS,**

DISEASE OR DEATH TO ANY PERSON OR DAMAGE TO, LOSS OF OR DESTRUCTION OF TANGIBLE OR INTANGIBLE PROPERTY, LIBEL, SLANDER, INVASION OF PRIVACY AND UNAUTHORIZED USE OF ANY TRADEMARK, TRADE NAME, COPYRIGHT, PATENT, SERVICE MARK OR ANY OTHER RIGHT OF ANY PERSON, FIRM OR CORPORATION, WHICH MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH BFM'S OPERATION, MAINTENANCE, USE OR CONDITION OF THE AREAS DESIGNATED FOR BFM'S USE UNDER THIS AGREEMENT.

**Article V
Severability**

- 5.01 If any provision of this Agreement is held to be invalid, illegal or unenforceable by a final order entered by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For purposes of this Agreement, a court order shall be final only to the extent that all available legal rights and remedies pertaining to such order, including without limitation all available appeals, have been exhausted.

**Article VI
Termination**

- 6.01 The City retains the sole and exclusive right to terminate this Agreement at any time, provided BFM is notified four (4) days in advance of said Termination. Should BFM violate any term of this Agreement, the four-day notice is waived and the Agreement terminates upon notification to BFM by City.

**Article VII
Independent Contractor**

- 7.01 In executing this Agreement and in performing their respective obligations, the City and BFM are acting independently and not in any form of partnership or joint venture. The City assumes no responsibilities or liabilities to any third parties in connection with this Agreement.

**Article VIII
Miscellaneous**

- 8.1 City may be excused from performance under this Agreement when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that City has prudently and promptly acted to take any and all steps that are within City's control to ensure performance and to shorten the duration of the event of Force Majeure. If City suffers an event of Force Majeure, it shall provide notice of the event to the BFM immediately. Subject to this provision, such nonperformance shall not be deemed an event of default.

8.2 All notices required or permitted by this Agreement will be delivered either (a) by certified mail, postage prepaid, effective five days after mailing, or (b) by hand delivery, effective upon delivery, in either case addressed as follows (or to such other address as a party may specify to the other party by notice delivered in accordance with the terms hereof):

To BFM:

Burleson Farmer's Market
c/o Chaz Forster, Operator
1004 Terragon Dr.
Burleson, Texas 76028

To the City:

City of Burleson
c/o City Manager
141 W. Renfro St.
Burleson, TX 76028

8.3 This written Agreement constitutes the entire Agreement between the Parties, and any prior oral agreement which purports to vary from the terms hereof shall be void.

8.4 This Agreement shall not be amended or modified other than in a written agreement signed by both Parties. Any amendment, modification, addition or change to this Agreement shall be in writing and shall be approved and executed in the same manner as this Agreement.

8.5 Neither Party may assign or transfer this Agreement or any interest in this Agreement without prior written consent of the other Party.

8.6 Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against either Party.

8.7 This Agreement is made and shall be construed in accordance with the laws of the State of Texas and venue for any dispute arising out of this Agreement shall lie in Johnson County, Texas.

8.8 [This section intentionally left blank.]

8.9 Nothing contained in this Agreement shall be construed as a waiver of the city's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to the city by law, except to the extent expressly provided or necessarily implied herein.

8.10 Nothing contained in this Agreement shall be construed as the granting of any permit or permission required by any city ordinance or regulation, or the waiver of any requirement of any city ordinance or regulation.

(Signature pages to follow)

EXECUTED this _____ day of _____, 2020.

BY: _____
Bryan Langley, City Manager

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

Before me, _____, the undersigned notary public, on this day personally appeared Bryan Langley as City Manager of the City of Burleson, who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed, and in that capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 2020.

Notary Public, State of Texas

My Commission Expires: _____

Commission Number: _____

Executed on the date first written above.

EXECUTED this _____ day of _____, 2020.

BY: _____
Chaz Forster
Burleson Farmer's Market

STATE OF TEXAS §
 §
COUNTY OF JOHNSON §

Before me, _____, the undersigned notary public, on this day personally appeared Chaz Forster, _____ of the Burleson Farmer's Market, who is known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed that instrument for the purposes and consideration therein expressed, and in that capacity therein stated.

Given under my hand and seal of office this _____ day of _____, 2020.

Notary Public, State of Texas

My Commission Expires: _____

Commission Number: _____