

RESOLUTION NO. 2007-209

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND THE OLD CITY FARMERS MARKET, A FLORIDA SOLE PROPRIETORSHIP, OF ST. AUGUSTINE, FLORIDA, FOR USE OF A PORTION OF THE ST. AUGUSTINE/ST. JOHNS AMPHITHEATRE FOR A WEEKLY FARMERS MARKET, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF AT. JOHNS COUNTY

WHEREAS, The Old City Farmers Market (OCFM) has requested that St. Johns County, Florida (County) authorize the use of a portion of the St. Augustine/St. Johns Amphitheatre for the purpose of a weekly Farmers Market; and

WHEREAS the County has recognized the benefit of supporting small farms, food growers, artists and crafts persons, and has recognized the need for creative marketing strategies for their products; and

WHEREAS, the County has recognized that the OCFM has created, developed and implemented marketing strategies through a network of said farmers, growers, artists and crafts people; and

WHEREAS, the OCFM agrees to pay St. Johns County a rental fee for the use of property at the St. Augustine Amphitheatre, thus generating revenue above costs through the rental fee; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the Agreement (attached hereto, and incorporated herein) and considered the request of OCFM; and

WHEREAS, the County has determined that accepting the terms of the Agreement, and entering into said Agreement is in the overall interests of not only the County, but also OCFM, to authorize a Farmers Market on a portion of the St. Augustine/St. Johns Amphitheatre.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Agreement between St. Johns County, Florida, and the Old City Farmers Market, and authorizes the County Administrator to execute the Agreement on behalf of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 24th day of July, 2007.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

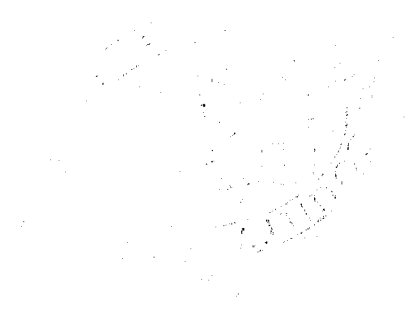
Attest:

Pam Haltem
Deputy Clerk

By:

Ben Rich
Ben Rich, Chair

RENDITION DATE 7/26/07



OLD CITY FARMERS' MARKET AGREEMENT

THIS AGREEMENT ("Agreement") is entered into, effective as of **August 1, 2007**, by and between **St. Johns County, Florida ("County")**, a political subdivision of the State of Florida, located at 4020 Lewis Speedway, St. Augustine, Florida 32084, and **"Old City Farmers' Market" ("OCFM")**, a Florida sole proprietorship, with a mailing address of 530 Lindsey Lane, St. Augustine, Florida 32086.

RECITALS

WHEREAS, the **Board of County Commissioners of St. Johns County, Florida ("Board")** has considered and examined the request by **OCFM**; and

WHEREAS, the **Board** has determined that it is in the overall interests of not only **St. Johns County, Florida**, but also **OCFM** to authorize a **Farmers' Market** on a portion of the **St. Augustine/St. Johns County Amphitheatre ("Amphitheatre")**.

NOW THEREFORE, the parties hereto, for, and in consideration of, the mutual covenants and conditions, hereinafter expressed, so hereby agree as follows:

Section 1. Findings.

The above recitals are incorporated by reference into the body of this **Agreement**, and such recitals are adopted as Findings of Fact.

Section 2. Purpose of this Agreement.

By this **Agreement**, the **County** permits and authorizes **OCFM** (under the terms, conditions, provisions, and requirements, set forth in this **Agreement**), to use a **portion of the Amphitheatre** which is located within St. Johns County, Florida (more particularly noted on **Exhibit "A"** of this **Agreement**, which is attached hereto, and incorporated herein by reference), in order to prepare for, produce, operate, maintain, and run a **Farmers' Market**, at **the Amphitheatre**.

Section 3. Duration of this Agreement.

The duration of this Agreement runs from **August 1, 2007**, through **July 31, 2017**. OCFM may request a **5-year** extension to this Agreement by submitting a written request to the County Administrator, no later than **December 31, 2016**. Should the County Administrator wish to extend this Agreement, then the County Administrator may do so, by approving, and executing a written extension to this Agreement.

Section 4. Scheduling of Farmers' Market; Priority of Use.

OCFM will oversee all preparatory activities associated with the Farmers' Market on **each Saturday, of each month, of each calendar year that this Agreement is in effect**. Accordingly, OCFM is authorized to "set-up/take-down/clean-up" Amphitheatre one (1) hour prior to the scheduled opening time, and **one-half (1/2) hour** after the scheduled closing time.

Unless otherwise noted in this Agreement, on the days/dates noted, OCFM may operate the Farmers' Market during the following hours: **8:00 am until 12:30 pm**.

In the event that OCFM wishes to operate the Farmers' Market on days/dates, or hours, other than those noted above, OCFM must first secure the written approval of the County Administrator.

It is understood that the County retains priority of use of the area designated as the Farmers' Market, in order to handle emergency situations. It is further understood that while every effort will be made by the County, not to unilaterally exercise its priority of use under non-emergency situations. However, the County expressly reserves the right to occupy the space/area designated as the Farmers' Market up to, but no more than, two (2) times during a calendar year. In such a circumstance, the County will attempt to find an alternate site/location for the Farmers' Market, for the affected date/dates. If the County cannot find an alternate site/location, then the County will agree to another mutually agreeable date for addition within the succeeding twelve-month time frame.

Section 5. Force Majeure.

Neither the County, nor the OCFM shall be held in non-compliance with terms, conditions, provisions, and requirements of this Agreement, nor suffer any enforcement or penalty relating thereto (including suspension, termination, cancellation, or revocation of this Agreement) where such non-compliance or alleged default occurred and/or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond the control of the OCFM.

Section 6. Severability.

If any word, phrase, sentence, part, subsection, section, or other portion of this **Agreement**, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this **Agreement**, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

Section 7. Governing Law and Venue.

This **Agreement** shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this **Agreement** shall be in St. Johns County, Florida.

Section 8. Compliance with Laws.

For the duration of this **Agreement**, the **OCFM** is expected to abide by, and comply with, any, and all, applicable local, State, and/or Federal laws, codes, rules, regulations, and/or requirements, including, but not limited to: 1) the Americans with Disabilities Act (“ADA”); 2) prohibiting discrimination; 3) Occupational Safety; 4) environmental safety and hazards; and 5) employment, including verification of status/citizenship, compensation, and/or benefits.

Section 9. Use of County Logo.

Pursuant to, and consistent with **County Ordinance 92-2, and County Administrative Policy 101.3**, the **OCFM** may not manufacture, use, display, or otherwise use any facsimile or reproduction of the **County** seal without the express written approval of the **Board**.

Section 10. Procedure for Achieving Assignment; Effect of Not Following Procedure.

In light of the scope and rationale for this **Agreement**, neither the **County**, nor the **OCFM** may assign, transfer, and/or sell any of the rights noted in this **Agreement**, or associated with this **Agreement**, without the express written approval of the other party. Should either the **County**, or the **OCFM**, assign, transfer, and/or sell any of the rights of this **Agreement**, without such prior written approval of the other party, then such action on the part of either the **County**, or the **OCFM**, shall result in the automatic termination of this **Agreement**, without further notice required on the part of the other party.

Section 11. Amendments to this Agreement.

Both the **County**, and the **OCFM**, acknowledge that this **Agreement**, together with any attached, and incorporated Exhibits, constitute the complete agreement and understanding of the **County**, and the **OCFM**.

Further, both the **County**, and the **OCFM** acknowledge that any change, amendment, modification, revision, or extension of this **Agreement**, other than termination as noted elsewhere in this **Agreement**, shall be in writing, and shall be executed by duly authorized representatives of both the **County**, and the **OCFM**.

Section 12. Fee For Use of Amphitheatre.

As payment for the **County's** authorization to use the **Amphitheatre** for a **Farmers' Market**, the **OCFM** shall pay a fee of **four dollars (\$4.00)** per vendor or booth space rented.

On a monthly basis, **OCFM** shall file a report with the **County Parks and Recreation Department** indicating the amount of use at **the Amphitheatre** for the previous month. **OCFM** shall pay the **County**, for such previous month's usage of **the Amphitheatre**. **OCFM's** monthly payment to the **County** shall be submitted to the **County** no later than fifteenth of each month.

Section 13. Security Deposit Required.

Prior to operating the **Farmers' Market**, **OCFM** shall furnish to the **County**, a security deposit in the amount of **one hundred dollars (\$100.00)**.

Based on changed conditions/circumstances, the **County** may increase or decrease the amount of the security deposit. In the event of an increase in the security deposit, the **County** shall give at least **sixty (60) days** advance written notice, prior to the effective date of such security deposit increase.

In the event that all, or a portion, of the security deposit is used by the **County** to recoup costs expended by the **County**, the **OCFM** has **thirty (30) days** in which to replenish the security deposit to its original dollar amount.

The security deposit may be used by the **County**, to reimburse, or refund the **County** for any expenses undertaken by the **County**, which are associated with clean-up, repairs, restoration, or required maintenance of **the Amphitheatre** during, or after, the expiration of this **Agreement**.

After the termination of this **Agreement**, and in the event that the **County** determines that the **Amphitheatre** has been left in a condition that does not require the **County** to expend all, or part, of the security deposit, then the **County** shall return the unexpended portion of the security deposit to **OCFM**.

The **County** shall return any unexpended portion of the security deposit to **the OCFM**, no later than **six (6) months after the effective date of this Agreement**.

Notwithstanding any other provision in this Section, or in this **Agreement**, the **County** may, upon written request by the **OCFM**, eliminate and refund the security deposit, in the event that the **County** has not had to use, or draw down on the security deposit in the preceding twelve-month period.

Section 14. Insurance.

Except as noted in this Section, the **OCFM** shall comply with, and adhere to, all applicable provisions contained in the *Insurance Requirements Policy for use on County Facilities*, which is attached and incorporated as an Exhibit to this **Agreement**. Notwithstanding the *Insurance Requirements Policy for use on County Facilities*, the **OCFM** may not permit and/or authorize the sale or consumption of alcoholic beverages or illegal narcotic substances on, or within that portion of the **Amphitheatre** used as a **Farmers' Market**. The **OCFM** shall comply with, and adhere to, all applicable provisions contained in the *Insurance Requirements Policy on County Facilities* for duration of this **Agreement**, including any extensions of this **Agreement**. Failure to maintain any, and/or all required insurance shall result in the automatic termination of this **Agreement**, without the necessity of providing further notification of termination.

Section 15. Indemnification.

To the extent permitted by law, the **OCFM** shall indemnify and hold harmless the **County**, its officials, agents, servants, and employees from, and against, any, and all, claims, liabilities, losses, and/or causes of action that may arise from any negligent act or omission on the part of the **OCFM**, to the extent that such negligent act or omission is connected with the services provided under, or associated with, this **Agreement**.

Section 16. Risk of Loss.

It is specifically understood that the **County** does not accept and/or assume any responsibility whatsoever for any person or property that enters that portion of the **Amphitheatre**, designated for use as the **Farmers' Market**, during set-up/operating/clean-up hours for said **Farmers' Market**. In consideration of the execution of this **Agreement** by the **County**, the **OCFM** releases the **County** from any, and all, liability for any loss, injury, death, theft, damage, or destruction to any persons or property which may occur in, or about, that portion of the **Amphitheatre**, designated for use as the **Farmers' Market**, regardless of the cause. Nevertheless, the **OCFM** shall not be liable for any, and all, liability, which is determined to be caused solely due to the intentional or willful misconduct of the **County**.

Section 17. Maintenance of the Amphitheatre.

For the duration of this **Agreement**, **OCFM** shall be responsible for maintaining the **Amphitheatre** in a clean and safe condition. All solid waste, animal waste, yard/trash/waste, construction and demolition debris shall be removed and/or disposed of in receptacles approved by the **County**, or in a manner that is approved by the **County**.

Failure by **OCFM** to maintain the **Amphitheatre** in a clean and safe condition may result in the **County** having to expend funds for cleanup and/or repair of the **Amphitheatre** after any **Farmers' Market** session. In such case, all, or a portion, of the **OCFM's** security deposit (as noted elsewhere in this **Agreement**), may be expended. If, due to the failure of the **OCFM** to maintain the **Amphitheatre** in a clean and safe condition, the **County** expends more than the amount of the security deposit (if a security deposit is required and/or maintained), then the **OCFM** shall be required to pay any amount that is not covered by the security deposit. If there is no security deposit, then the **OCFM** is required to re-imburse the **County**, for any, and all, funds expended, in order to cleanup and/or repair the **Amphitheatre** after any **Farmers' Market** session.

Section 18. OCFM's Responsibilities/Obligations.

Under this **Agreement**, the **OCFM** shall have the following responsibilities/obligations:

- a) to inspect that portion of the **Amphitheatre** being used for the **Farmers' Market**, prior to every scheduled use, in order to determine the overall condition of the **Amphitheatre** being used for the **Farmers' Market**, and notify the **County** prior to such scheduled use, if that portion of the **Amphitheatre** being used for the **Farmers' Market** requires attention and/or repair;
- b) Maintain insurance as noted elsewhere in this **Agreement**;
- c) Abide by, and comply with, all applicable laws, rules, and regulations, as noted elsewhere in this **Agreement**;
- d) To the extent that water, sewer, or electricity are supplied to any booth by the **County**, then the **OCFM** shall be responsible to re-imburse and/or pay the **County** the cost to supply any booth with water, sewer, or electricity to any booth, together with any actual use charges that might be initially borne by the **County**.

Section 19. Prohibited Activities.

It is explicitly understood that the **County** prohibits the **OCFM** to allow the following activities to occur within **that portion of the Amphitheatre** that is designated as the **Farmers' Market**:

- a) Sale or consumption of beer, wine, or other alcoholic beverages;
- b) sale of prescription drugs;
- c) sale or consumption of federally-controlled substances, or illegal narcotic substances;
- d) sale of any federally-recalled product, device, food, and/or liquid/juice/drink;
- e) sale or consumption of any federally-banned product, device, weapon, drug, food, and/or liquid/juice/drink;
- f) sale of any product, device, or substance classified as, or regulated as, a hazardous substance under either federal or state law, rule, or regulation;
- g) sale of any animal that is classified as federally-protected, or federally-endangered;
- h) sale of any animal whose ownership by an individual is not permitted under either federal or state law, rule, or regulation; and
- i) sale of any animal that is known to carry a contagious or communicable disease that may be passed onto another animal or a human

Section 20. Reserved Rights of County.

It is explicitly understood that the **County** reserves the following rights:

- a) require security and/or medical personnel, in those instances where there is a documented safety and/or health risk and/or need;
- b) authorize unannounced inspections of that portion of the **Amphitheatre** used as the **Farmers' Market** during set-up/operating/close-down hours; and
- c) impose additional requirements in those instances where there are documented health, safety, and/or welfare concerns.

Section 21. Sign Placement.

The **County** reserves the right to inspect and monitor the placement of all signs (directional or otherwise), to ensure compliance with the applicable provisions of the **County's Sign Ordinance**, and in order to ensure the safety of persons walking/traveling around the **Farmers' Market**.

Section 22. Permits and Licenses.

To the extent that the **OCFM** needs to obtain/acquire and/or maintain permits and/or licenses, in order to manage and/or operate the **Amphitheatre**, or facilitate **County-approved** activities at the **Amphitheatre**, then the **OCFM** shall be responsible for obtaining/acquiring, and maintaining at the **OCFM's** sole expense, any, and all, permits, licenses, and/or approvals required by Federal, State, and/or **County** law, rule, regulation, or ordinance. Specifically, the **OCFM** shall be required to secure, obtain/acquire, and maintain for the duration of this **Agreement**, any and all, State permits, licenses that are required for, or associated with, **Farmers' Markets, Flea Markets**, or functionally similar activities.

Section 23. Termination of Agreement.

This **Agreement** may be terminated with cause upon either the **County**, or the **OCFM** giving at least **one hundred eighty (180) days** advance written notice to the other party of such notice of termination. Such written notification shall indicate the exact cause(s) for termination of this **Agreement**, the exact date of termination, and shall result in termination of the cause(s) for termination cannot be satisfactorily cured, or resolved within the timeframe, set forth in the notice of termination. Consistent with other provisions of this **Agreement**, the **County** will compensate the **OCFM** for any services and/or expenses that are authorized under this **Agreement**, and that are performed and/or accrued up to the date of the notice of termination. Thereafter, the **County** will only compensate the **OCFM** for services and/or expenses that are pre-approved by the **County Administrator**, or his/her designee.

This **Agreement** may be terminated without cause upon either the **County**, or the **OCFM** giving at least **one hundred eighty (180) days** advance written notice to the other party of such notice of termination. Such written notice need not specify any cause for termination, but shall indicate the date on which termination is effective. Consistent with other provisions of this **Agreement**, the **County** will compensate the **OCFM** for any services and/or expenses that are authorized under this **Agreement**, and that are performed and/or accrued up to the date of the notice of termination. Thereafter, the **County** will only compensate the **OCFM** for services and/or expenses that are pre-approved by the **County Administrator**, or his/her designee.

Section 24. Access to Records.

The access to, disclosure, non-disclosure, and/or exemption of records, data, documents, and/or materials associated with this **Agreement** shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

Section 25. Review of Records.

As a condition of entering into this **Agreement**, and to ensure compliance, especially as it relates to any applicable employment law provision, the **OCFM** authorizes the **County** to examine, review, inspect, and/or audit the books and records, in order to determine whether compliance has been achieved with respect to the terms, conditions, provisions, rights, and responsibilities noted in this **Agreement**. It is specifically **noted** that the **OCFM** is under no duty to provide access to documentation, not related to this **Agreement**, and this is otherwise protected by **County**, State, or Federal law.

Section 26. No Commitment of County Funds.

While the **County** will make all reasonable efforts, in order to budget and/or provide funds needed to maintain, repair, and/or improve the **Amphitheatre**, the **County** makes no express commitment to provide such funds in any given **County Fiscal Year** (which runs from October 1 of one calendar year through September 30 of the next calendar year). Moreover, it is expressly noted that the **OCFM** cannot demand that the **County** budget and/or provide such funds in any given **County Fiscal Year**.

Section 27. Relationship of the County and the OCFM.

This **Agreement** shall not be deemed or construed to create any agency relationship, partnership (limited or otherwise), association, or joint venture between the **County**, and the **OCFM**.

Section 28. No Third Party Beneficiaries.

Both the **County**, and the **OCFM**, explicitly agree, and this **Agreement** explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

Section 29. Required Disclaimer.

It is expressly understood that this **Agreement** does not in any way or form, create an affiliate relationship between the **County** and the **OCFM**.

It is expressly understood that in all advertising, of any sort, and by any means, the **OCFM** must:

- 1) specifically disclaim any endorsement by the **County**, on behalf of the **Farmers' Market**;
- 2) specifically disclaim any sponsorship by the **County**, on behalf of the **Farmers' Market**; and
- 3) specifically disclaim any affiliate relationship by the **County**, with respect to production, and/or presentation of the **Farmers' Market**.

The advertising referenced in this Section, includes, but is not limited to newspaper/magazine advertisements and/or inserts/stuffers/flyers; television/cable television advertisements, classified advertisements, or infomercials; Internet/web advertisements (including, but not limited to, banner ads, banner ads, classified ads); classified advertisements through any other media delivery source, individual flyers, door-hangers, handouts, signs, and/or billboards.

Section 30. Notices.

All notices, and other correspondence to the **County** shall be delivered, either by hand (receipt of delivery is necessary), or by U.S. Mail to:

County Administrator
4020 Lewis Speedway
St. Augustine, Florida 32084

With a Copy To:

Special Events Manager
St. Johns County
2175 Mizell Road
St. Augustine, FL 32080

All notices, and other correspondence to the **OCFM** shall be delivered, either by hand (receipt of delivery is necessary), or by U.S. Mail to:

Old City Farmers' Market
530 Lindsey Lane
St. Augustine, Florida 32086

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the day and year below written.

ST. JOHNS COUNTY, FLORIDA

OLD CITY FARMERS' MARKET

BY: _____

BY: Lynn B. Wettsch

DATE: _____

DATE: 6/24/2009

ATTEST: CHERYL STRICKLAND, CLERK OF COURTS

WITNESS:

BY: _____
Deputy Clerk

Jay Blaw

WITNESS:
