RESOLUTION NO. 2012-125

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 LINDA ARNOLD ("NORTH BEACH ARTS MARKET") OF ST. AUGUSTINE, FLORIDA, FOR USE OF A PORTION OF NORTH SHORES PARK FOR A WEEKLY ARTS MARKET, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

RECITALS

WHEREAS, Linda Arnold ("North Beach Arts Market") has requested that St. Johns County, Florida ("County") authorize the use of a portion of North Shores Park for the purpose of a weekly Arts 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 North Beach Arts Market has created, developed and will be implementing marketing strategies through a network of artists; and

WHEREAS, through proceeds generated by rentals fee charged to participating vendors, the County will receive four dollars ($4) per vendor or booth space each week the North Beach Arts Market takes place; and

WHEREAS, the County has determined that accepting the terms of the proposed Agreement (attached hereto and incorporated herein), and entering into said Agreement is in the overall interests of not only the County, but also the North Beach Arts Market.

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 attached Agreement between St. Johns
County, Florida, and Linda Arnold ("North Beach Arts Market"), and authorizes the County Administrator to execute the Agreement on behalf of St. Johns County.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor or context of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. This Resolution shall be effective upon execution by the Chair of the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 19th day of April, 2012.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

Attest: /s/ Pam Hertman
Deputy Clerk

By: /s/ [Signature]
Mark P. Miner, Chair

RENDITION DATE 4/19/12

[Stamp: LEGALLY SUFFICIENT]
MASTER FARMERS MARKET AGREEMENT

THIS AGREEMENT ("Agreement") is entered into, effective as of April 17, 2012 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 Linda Arnold ("North Beach Arts Market"), a Florida sole proprietorship, with a mailing address of 98 Corunna Street, St. Augustine, Florida 32084.

RECITALS

WHEREAS, the Board of County Commissioners of St. Johns County, Florida ("Board") has considered and examined the request by Linda Arnold (North Beach Arts Market); and

WHEREAS, the Board has determined that it is in the overall interests of not only St. Johns County, Florida, but also Linda Arnold to authorize an Art Market on a portion of North Beach Park, 3721 Coastal Highway, St. Augustine, Florida 32084.

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 Linda Arnold (under the terms, conditions, provisions, and requirements, set forth in this Agreement), to use North Beach Park, 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 an Arts Market, at North Beach Park.

Section 3. Duration of this Agreement.

The duration of this Agreement runs from April 20, 2012, through April 19, 2015. North Beach Arts Market may request a 2-year extension to this Agreement by submitting a written request to the County Administrator, no later than December 31,
2014. 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.

Linda Arnold will oversee all preparatory activities associated with the Arts Market on the following days/dates: Saturdays. Accordingly, North Beach Arts Market is authorized to “set-up/take-down/clean-up one half hour prior to the scheduled opening time, and one half after the scheduled closing time.

Unless otherwise noted in this Agreement, on the days/dates noted, North Beach Arts Market may operate the Arts Market during the following hours: 3:00 p.m. to 7:00 p.m.

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

Section 4. Force Majeure.

Neither the County, nor the North Beach Arts Market 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

Section 5. 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.


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 7. Compliance with Laws.

For the duration of this Agreement, the North Beach Arts Market 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 8. Use of County Logo.

Pursuant to, and consistent with County Ordinance 92-2, and County Administrative Policy 101.3, the North Beach Arts Market 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 9. Procedure for Achieving Assignment; Effect of Not Following Procedure.

In light of the scope and rationale for this Agreement, neither the County, nor the North Beach Arts Market 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 North Beach Arts Market, 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 North Beach Arts Market, shall result in the automatic termination of this Agreement, without further notice or required on the part of the other party.

Section 10. Amendments to this Agreement.

Both the County, and the North Beach Arts Market, acknowledge that this Agreement, together with any attached, and incorporated Exhibits, constitute the complete agreement and understanding of the County, and the North Beach Arts Market.

Further, both the County, and the North Beach Arts Market 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 North Beach Arts Market.

Section 11. Fee For Use of North Beach Park.

As payment for the County’s authorization to use the North Beach Park for an Art Market, the North Beach Arts Market shall pay a fee of $4.00 per vendor or booth space rented.

On a monthly basis, North Beach Arts Market shall file a report with the County Administrator indicating the amount of use at North Beach Park for the previous month. North Beach Arts Market shall pay the County, for such previous month’s usage of North Beach Park. North Beach Arts Market’s monthly payment to the County shall be submitted to the County no later than fifteenth of each month.
Section 12. Security Deposit Required.

Prior to operating the Arts Market, North Beach Arts Market shall furnish to the County, a security deposit in the amount of $250.00 (two hundred fifty dollars).

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 30 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 North Shore Arts Market has 5 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 North Beach Park during, or after, the expiration of this Agreement.

After the termination of this Agreement, and in the event that the County determines that North Beach Park 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 North Beach Arts Market.

The County shall return any unexpended portion of the security deposit to North Beach Arts Market no later than May 30, 2015 unless 2 year extension has been requested.

Notwithstanding any other provision in this Section, or in this Agreement, the County may, upon written request by the North Beach Arts Market, 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 13. Insurance.

Except as noted in this Section, the North Beach Arts Market 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 North Beach Arts Market may not permit and/or authorize the sale or consumption of alcoholic beverages or illegal narcotic substances on, or within that portion of North Beach Park used as an Arts Market. The North Beach Arts Market 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.


To the extent permitted by law, the North Beach Arts Market shall indemnify, defend 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 North Beach Arts Market to the extent that such negligent act or omission is connected with the services provided under, or associated with, this Agreement.

Section 15. 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 North Beach Park designated for use as the Arts Market, during set-up/operating/clean-up hours for said Arts Market. In consideration of the execution of this Agreement by the County, the North Beach Arts Market 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 North Beach Park, designated for use as the Arts Market, regardless of the cause. Nevertheless, the North Beach Arts Market 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 16. Maintenance of North Beach Park

For the duration of this Agreement, North Beach Arts Market shall be responsible for maintaining North Beach Park 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. North Beach Arts Market must remove their trash from premises at the conclusion of each session.

Failure by North Beach Arts Market to maintain North Beach Park in a clean and safe condition may result in the County having to expend funds for cleanup and/or repair of the North Beach Park after any Arts Market session. In such case, all, or a portion, of North Beach Arts Market's security deposit (as noted elsewhere in this Agreement), may be expended. If, due to the failure of North Beach Arts Market to maintain North Beach Park 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 North Beach Arts Market shall be required to pay any amount that is not covered by the security deposit. If there is no security deposit, then North Beach Arts Market is required to reimburse the County, for any, and all, funds expended, in order to cleanup and/or repair North Beach Park after any Arts Market session.
Section 17. North Beach Arts Market’s Responsibilities/Obligations.

Under this Agreement, the North Beach Arts Market shall have the following responsibilities/obligations:

a) to inspect that portion of North Beach Park being used for the Arts Market, prior to every scheduled use, in order to determine the overall condition of North Beach Park being used for the Arts Market, and notify the County prior to such scheduled use, if that portion of the North Beach Park being used for the Arts 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 North Beach Arts Market shall be responsible to reimburse 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 18. Prohibited Activities.

It is explicitly understood that the County prohibits the North Beach Arts Market to allow the following activities to occur within North Beach Park that is designated as the Arts 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 19. 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 North Beach Park used as the Arts 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 20. 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 Arts Market.

Section 21. Permits and Licenses.

To the extent that the North Beach Arts Market needs to obtain/acquire and/or maintain permits and/or licenses, in order to manage and/or operate the North Beach Arts Market, or facilitate County-approved activities at North Beach Park then North Beach Arts Market shall be responsible for obtaining/acquiring, and maintaining at North Beach Arts Market’s sole expense, any, and all, permits, licenses, and/or approvals required by Federal, State, and/or County law, rule, regulation, or ordinance. Specifically, North Beach Arts Market 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, Arts Markets, Flea Markets, or functionally similar activities.

Section 22. Termination of Agreement.

This Agreement may be terminated with cause upon either the County, or the North Beach Arts Market giving at least 30 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 North Beach Arts Market 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 North Beach Arts Market 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 North Beach Arts Market giving at least 30 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 North Beach Art
Market 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 North Beach Arts Market for services and/or expenses that are pre-approved by the County Administrator, or his/her designee.

Section 23. 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).


As a condition of entering into this Agreement, and to ensure compliance, especially as it relates to any applicable employment law provision, the North Beach Arts Market 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 note that the North Beach Arts Market 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 25. 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 North Beach Park, 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 North Beach Arts Market cannot demand that the County budget and/or provide such funds in any given County Fiscal Year.

Section 26. Relationship of the County and North Beach Arts Market.

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 North Beach Arts Market.

Section 27. No Third Party Beneficiaries.

Both the County, and the North Beach Arts Market, 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 28. Required Disclaimer.

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

It is expressly understood that in all advertising, of any sort, and by any means, North Beach Arts Market must:

1) specifically disclaim any endorsement by the County, on behalf of the Arts Market;
2) specifically disclaim any sponsorship by the County, on behalf of the Arts Market; and
3) specifically disclaim any affiliate relationship by the County, with respect to production, and/or presentation of the Arts 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 29. 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:

Interim Director, St. Johns County Recreation and Parks Department
2175 Mizell Road
St. Augustine, Florida 32080

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

Linda Arnold
98 Corunna Street
St. Augustine, Florida 32084
IN WITNESS WHEREOF, the parties have hereunto executed this Agreement on the day and year below written.

ST. JOHNS COUNTY, FLORIDA

BY:______________________

DATE:______________________

ATTEST: CHERYL STRICKLAND, CLERK OF COURTS

BY:______________________
Deputy Clerk

BY:______________________

DATE:______________________

North Beach Arts Market

WITNESS:

WITNESS: