

Jim.  
2-3-14

**AGREEMENT FOR MANAGEMENT OF FARMERS' MARKET**

**THIS MANAGEMENT AGREEMENT** (hereinafter "Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Manitowoc, a municipal corporation, located at 900 Quay Street, County of Manitowoc, Wisconsin, 54220, (hereinafter "City") and Mainly Manitowoc, a Wisconsin non-stock corporation, 805 Quay Street, Manitowoc, WI 54220 (hereinafter "Mainly Manitowoc").

**RECITALS**

**WHEREAS**, the City has sponsored, managed, and funded the Manitowoc Farmers' Market ("Market") since 2001 at its current location in the City, which is located on parcel 000-219-010 ("Location"); and

**WHEREAS**, the Market Location is leased from Riverland Ag Corp, and the City is authorized to use Location for the Market pursuant to Section 4.1.1 of a Ground Lease with Riverland Ag Corp, effective May 24, 2012; and

**WHEREAS**, Mainly Manitowoc promotes the overall economy and quality of life for the City of Manitowoc by engaging the community in an effort to preserve and revitalize downtown; and

**WHEREAS**, Mainly Manitowoc has expressed a desire to act as the City's agent in administering the Market.

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth and for other good and valuable consideration, the parties do agree as follows:

**I. Market Administration.** Subject to the terms and conditions of this Agreement, Mainly Manitowoc shall be the City's agent for purposes of managing the day-to-day operations of the Market pursuant to, and in accordance with, the most current vendors' "Participation and License Agreement" of the Market, attached as exhibit A. This includes all rights of ingress and egress to the Market Location. Mainly Manitowoc is authorized to hire a market director at their expense and collect, hold, and disburse rents and other fees, charges, and deposits with respect to the Market. Mainly Manitowoc shall notify the City in writing of any changes made to the Information and Policies. Mainly Manitowoc shall notify the City in writing of any changes made to the Participation and License Agreement.

**II. Market Hours and Operations.** The Market shall be held on Tuesdays and Saturdays as was previously conducted by the City. Mainly Manitowoc shall substantially follow all Market "Information and Policies" as set forth by City in 2013 and attached as exhibit B. Mainly Manitowoc shall notify the City in writing of any changes made to the Information and Policies.

**III. Term.** This Agreement shall be in effect for two years, effective February 1, 2014, and terminating January 31, 2016. The City shall notify Mainly Manitowoc no later than December 1, 2015 if it intends to terminate the agreement. If no notice is served after the two year initial term of this Agreement, the Agreement shall automatically renew for two year terms, with either party having the option of giving at least sixty calendar days written notice of termination at the end of any two year term. Said notice shall be given after July 1<sup>st</sup> of the second year of any given two year term, but no later than December 1<sup>st</sup> of that year.

**IV. Payment.** The City will allow Mainly Manitowoc to retain all revenues from the Market beginning with the 2014 Market for purposes of continued Market administration. Mainly Manitowoc is an independent contractor under this Agreement, and is expressly and solely responsible for compliance with all federal and state wage and income tax laws and regulations, as well any other applicable federal, state and local employment laws.

**V. Transition.** City Staff will assist Mainly Manitowoc in transitioning Market to their management. City will provide a \$4,000 startup fund, vendor list, sales records, and all other forms, policies, and procedures relating to the Market within fourteen days of the execution of this Agreement. The City shall retain \$30,000 in a separate budget line for the purposes of making improvements to the Market Location in the future.

**VI. Inspection of Records and Reporting.** The City shall have the right to inspect any and all records, contracts, financial statements, ledgers, or written documents which relate to and are generated by the responsibilities and obligations of Mainly Manitowoc as expressly related to this Agreement. Mainly Manitowoc shall provide an annual report on the Market to the Manitowoc Common Council, either in conjunction with their annual report regarding the Services Agreement between the parties or as a separate report.

**VII. Compliance with Laws.** Mainly Manitowoc shall conduct the Market in compliance with all Federal, State, and Local laws and regulations.

**VIII. Insurance.** At all times during the term of this Agreement, Mainly Manitowoc shall keep in force and effect all insurances policies outlined below, issued by a company or companies licensed to do business in the state of Wisconsin, which shall be acceptable to the City. Mainly Manitowoc shall provide a current Certificate of Insurance to the City as evidence of coverage throughout the Agreement, giving the City 30 days notice of cancellation or termination.

**Liability Insurance.** Mainly Manitowoc shall carry comprehensive liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and \$2,000,000 aggregate, with property damage of not less than \$1,000,000. Statutory worker's compensation and employer's liability insurance as set forth in state statute is also required.

**IX. Indemnification.** Mainly Manitowoc shall defend, indemnify and hold harmless City and all its officials, departments, committees, employees, representatives and agents against any and all liability, claims, costs, damages, expenses, demands, lawsuits or disputes, including reasonable attorney fees and all costs and expenses of litigation, except to the extent caused by or attributed to the negligent acts of the City.

**X. Default.** A material default or material breach (both hereinafter referred to as a "default") under this Agreement shall be defined as the failure of the parties to perform any term, covenant, condition, warranty, or promise of this Agreement required to be performed by Mainly Manitowoc or the City. In the event of any default of this Lease, or any of its terms or conditions by any party hereto, such party shall, upon written notice from the other party, proceed immediately to cure or remedy such default, and in any event shall cure such default within 30 calendar days of receipt of written notice of default. In the event of a default, the non-defaulting party shall have the option of terminating the Agreement upon written notice to the breaching party.

**XI. Assignment.** This Agreement is not assignable without the prior written consent of the City.

**XII. Integration.** This agreement represents the entire understanding of the City and Mainly Manitowoc as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to matters covered hereunder.

**XIII. Jurisdiction.** This agreement shall be administered and interpreted under the laws of the State of Wisconsin. Jurisdiction of litigation arising from this Agreement shall be in this state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this agreement shall be in full force and effect.

**XIV. Survival of Provisions.** All indemnification and hold harmless obligations of Mainly Manitowoc shall survive the expiration or termination of this Agreement.

**XV. Notice and Demand.** Any notice, demand, or communication under this Agreement by any party to the other party shall be given or delivered by first class, registered, or certified mail, postage paid, return receipt requested or delivered in person as follows to:

CITY:

CITY CLERK  
900 Quay Street  
Manitowoc, WI 54220

MAINLY MANITOWOC:

MAINLY MANITOWOC  
805 Quay Street

Manitowoc, WI 54220

The above addresses or designated party may be changed in any time by the parties by giving notice in writing in the manner provided above.

**XVI. Amendments.** This Agreement is the entire agreement between the parties and can only be modified or changed in writing executed in the same manner as this document by all parties.

**XVII. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns. Any transfer of any party's interest under this Agreement, shall not release the transferring party from its obligations hereunder.

**XVIII. Severability.** If any provision of this Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and such remainder would then continue to be valid and enforceable to the fullest extent permitted by law.

**XIX. Time of Essence.** Time is of the essence of this Agreement and of every term, condition, or covenant to be performed by the parties.

**XX. Section Headings.** The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.

**XXI. Governing Law.** This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly, to this Agreement whether sounding in contract or tort shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.

**XXII. Relationship of Parties.** Nothing in this Agreement nor any act of the Lessees or City shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto. Mainly Manitowoc is an independent contractor providing services to the City. No employee of Mainly Manitowoc shall be considered an employee of the City or be covered under any City insurance policies.

**XXIII. Rights and Remedies Cumulative.** The rights and remedies of the parties, whether provided by law or provided by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of default, or of any remedies for any other event of default by the other parties. No waiver made by

any party with respect to the performance or manner or time of any obligation of any party under the Agreement, shall be considered a waiver of any rights of Mainly Manitowoc or City, as the case may be, to enforce any other obligations of the parties under this Agreement. Delay of any party in the enforcement of any term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any party's right to enforce said obligation.

**XXIV. Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

**XXV. Construction.** All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute, or contest over the meaning, interpretation, validity or enforcement of this document or any of its terms or conditions, there shall be no inferences, presumption or conclusion drawn whatsoever against any party whatsoever by virtue of that party having drafted the document or any portion thereof.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this agreement as of the day and year first above written.

**By:**

**City of Manitowoc**

**Mainly Manitowoc**

\_\_\_\_\_  
Mayor Justin M. Nickels

\_\_\_\_\_  
Jamie Zastrow

\_\_\_\_\_  
City Clerk Jennifer Hudon

\_\_\_\_\_  
Patricia Roth, President

**STATE OF WISCONSIN     )**  
**) ss.**  
**COUNTY OF MANITOWOC )**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the above signed Jamie Zastrow and Patricia Roth acknowledged that they executed the foregoing instrument.

\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires) (is): \_\_\_\_\_

**STATE OF WISCONSIN     )**  
**) ss.**  
**COUNTY OF MANITOWOC )**

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the above signed Justin M. Nickels, Mayor, and Jennifer Hudon, City Clerk, of the City of Manitowoc, Wisconsin and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My commission (expires) (is): \_\_\_\_\_  
\_\_\_\_\_

**Downtown Manitowoc  
Farmers' Market  
2013 MARKET Participation and License Agreement**  
*(Return by Friday, March 8, 2013)*

**NOTE: MARKET HOURS FOR 2013 HAVE BEEN CHANGED:**

- Tuesday's - 12:00 P.M. (Noon) - 6:00 P.M.
- Saturday's - 8:00 A.M. - 2:00 P.M.

For participation in Downtown Manitowoc's 2013 Farmers' Market (the "MARKET"), a non-transferable, revocable license agreement to occupy, use and participate in the MARKET, subject to the terms and conditions set forth herein (the "AGREEMENT") between the City of Manitowoc (the "CITY"), and the undersigned vendor (the "VENDOR"). The parties agree as follows:

A. VENDOR Responsibilities

1. VENDOR will comply with all local, State and Federal health and licensing requirements and regulations, including nutrition certification requirements. VENDOR is solely responsible for contacting the Manitowoc County Health Department (920-683-4155 or <http://www.healthdepartment@co.manitowoc.wi.us>) to determine if the products VENDOR will sell at the MARKET comply with all health regulations; to contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to determine that VENDOR's food processing operation is properly licensed (920-224-5048), and their scale is legal and approved for usage at the MARKET (920-224-4945); and the Department of Revenue for collecting and reporting any required sales tax (608-266-2776).
2. VENDOR agrees to not enter the MARKET:
  - A. On Saturday MARKET days, before 7:00 A.M., and agrees to be set up and open for business in their assigned display area space(s) no later than 8:00 A.M. on the day of the MARKET, unless permission to do so has been expressly granted pursuant to the "2013 MARKET Information & Policies". VENDOR agrees to make no sales before 8:00 A.M.
  - B. On Tuesday MARKET days, before 11:00 A.M., and agrees to be set up and open for business in their assigned display area space(s) no later than 12:00 P.M. on the day of the MARKET, unless permission to do so has been expressly granted pursuant to the "2013 MARKET Information & Policies". VENDOR agrees to

make no sales before 12:00 P.M.

C. **NO CUSTOMER SALES PERMITTED BEFORE 8:00 A.M. ON SATURDAY, AND BEFORE 12:00 P.M. ON TUESDAY MARKET DAYS.**

3. VENDOR will clean their assigned display area space(s), remove any garbage, and leave the MARKET property no later than:
  - A. On Saturday MARKET days, 3:00 P.M.
  - B. On Tuesday MARKET days, 7:00 P.M.
4. All VENDORS shall support the CITY-designated MARKET representative, Sherrie Richards, in sharing the responsibility of maintaining traffic barricades to keep vehicle traffic out of the MARKET during MARKET hours, and to advise all drivers who evade the barricades to leave slowly and immediately. All VENDORS share the responsibility of asking all customers with dogs or other pets to leave the MARKET immediately.
5. VENDOR agrees to participate in the FoodShare/SNAP program in the 2013 MARKET (check 1 box only):  
 Yes       No

B. CITY Responsibilities

1. CITY will support the general marketing and promotion of the MARKET which shall be led and coordinated by Sherrie Richards as the CITY-designated MARKET representative. All MARKET-related expenditures will be funded by VENDOR fees paid to, and collected by the CITY, which shall be placed in a fund retained by the CITY for marketing, maintenance and enhancement of the MARKET property. The CITY shall not be responsible for organizing or coordinating any activities related to special MARKET day programs or events.
2. CITY does not assume responsibility for VENDOR compliance with any local, State and Federal licensing requirements and regulations.
3. CITY will arrange for logistical support for the MARKET, which may include providing portable bathroom facilities, barricades and signs.
4. CITY will establish VENDOR display area rental fees and shall enforce MARKET policies and procedures.



5. CITY will identify and assign all VENDOR display area (parking) spaces and settle disputes involving VENDORS and between VENDORS, and will be responsible for terminating VENDOR participation in the MARKET as a result of improper MARKET conduct including racially discriminatory actions, or for a violation of any local, State or Federal licensing requirement or regulation.
6. The CITY reserves the right to refuse participation to VENDORS in the MARKET who do not comply with MARKET rules and regulations, and who fail to meet MARKET standards which include acceptable MARKET conduct and dress, and adhering to all local, State and Federal licensing requirements and regulations. The CITY shall have the right to terminate this AGREEMENT for cause.

This AGREEMENT shall be effective upon:

1. VENDOR delivery to the CITY of the entire AGREEMENT including the attached "Acknowledgment" filled out and signed by the participating VENDOR, plus a completed 2013 VENDOR (Seller) Questionnaire";
2. CITY receipt of the required VENDOR fee payment;
3. CITY receipt of a copy of all required VENDOR certifications, licenses and a photo ID;
4. Crafters are required to submit photographs of the type of items they intend to sell at the MARKET; and
5. The authorized signature of the CITY below.

***Note: Display area (parking) space(s) will not be assigned to a VENDOR until items 1-5 above have been completed, and all information required (ie. copies of all required operating licenses) is provided to the CITY and to the satisfaction of the CITY.***

***At any time during the MARKET season, Sherrie Richards as the CITY-designated MARKET representative is authorized to direct VENDORS to locate in display area spaces to accommodate overall MARKET appearance and customer flow.***

DISPLAY AREA SPACE(S) DESIGNATION

THE UNDERSIGNED VENDOR IS ASSIGNED TO THE FOLLOWING DISPLAY AREA SPACE(S) AT THE 2013 MARKET:

\_\_\_\_\_  
Display Area Space Assignment

VENDOR

\_\_\_\_\_  
Vendor Signature

\_\_\_\_\_  
Date

CITY OF MANITOWOC

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

RunDate: 2/1/2013

Filename: Y:\Dave\WPFILES\farmmarket2013participation&licenseagmt-212013.wpd

# Downtown Manitowoc Farmers' Market

## 2013 MARKET Information & Policies

*(Retain for VENDOR Records)*

**NOTE: MARKET HOURS FOR 2013 HAVE BEEN CHANGED—SEE BELOW!!**

- *Tuesday's – 12:00 P.M. (noon) – 6:00 P.M.*
- *Saturday's – 8:00 A.M. – 2:00 P.M.*

### **What is the Mission of the MARKET**

- M To give growers and producers of Wisconsin agricultural commodities, other farm-related and hand-made products alternative marketing opportunities.
- M To promote the sale of both Wisconsin-grown farm products, and unique ethnic products not readily available in this area.
- M To provide an opportunity for farmers and people from the community to deal directly with each other, rather than through third parties, and to thereby get to know and learn from one another.
- M To preserve Wisconsin's unique agricultural heritage and the historic role which farmers' markets have played in it.
- M To create a family-oriented environment, and to celebrate diversity through foods, arts and crafts, and people of the community.
- M To enhance the Manitowoc MARKET as a food market (garden grown, not store bought) first, with priority to locally grown products.

### **MARKET Season, Dates and Hours**

The 2013 MARKET will be run on **Tuesday (12:00 P.M. to 6:00 P.M.)** and **Saturday morning (8:00 A.M. - 2:00 P.M.)**. Tuesday's MARKET **begins June 11th** and will **end on October 8th**. Saturday's MARKET **begins May 18th** and will **end on October 26th**.

The MARKET will be held regardless of weather conditions, unless such conditions present a safety risk to the general public.

VENDORS (sellers) must clean up their stall(s), remove all garbage, and leave the MARKET property no later than 7:00 P.M. on Tuesday MARKET days, and 3:00 P.M. on Saturday MARKET days. For insurance liability reasons, VENDORS are strongly encouraged to remain at the MARKET in their designated display area space(s) until 6:00 P.M. on Tuesday MARKET days, and until 2:00 P.M. on Saturday MARKET days even if they have sold all their goods. No customer sales are permitted before 12:00 P.M. on Tuesday and 8:00 A.M. on Saturday MARKET days.

**SPECIAL NOTE:**     ***KRAZY DAZE IS TENTATIVELY SCHEDULED FOR SATURDAY, JULY 13, 2013. THIS IS A MAINLY MANITOWOC, INC. / MCCA SPONSORED EVENT. YOUR***

**REGULAR 2013 MARKET DISPLAY AREA SPACE(S) ASSIGNMENT IS NOT VALID FOR KRAZY DAZE. ALL VENDORS WILL BE CONTACTED IN EARLY JUNE, 2013 TO DETERMINE INTEREST IN THE MARKET DURING KRAZY DAZE. DISPLAY AREA SPACE(S) WILL BE ASSIGNED AND THE INFORMATION PROVIDED TO YOU BY JULY 1, 2013.**

**OTHER KEY 2013 DOWNTOWN MARKETING EVENTS INCLUDE:**

<b>SPRING MARKET DAY</b>	<b>JUNE 15<sup>TH</sup> (Sa)</b>
<b>KRAZY DAZE</b>	<b>JULY 13<sup>TH</sup> (Sa)</b>
<b>SENIOR DAY/NATIONAL FARMERS MARKET DAY</b>	<b>AUGUST 10<sup>TH</sup> (Sa)</b>
<b>MARKET APPRECIATION DAY</b>	<b>SEPTEMBER 14<sup>th</sup> (Sa)</b>
<b>HARVEST FEST</b>	<b>OCTOBER 5<sup>th</sup> (Sa)</b>

**THE SPONSORS FOR THESE EVENTS ARE RESPONSIBLE FOR CONTACTING MARKET VENDORS IN ADVANCE OF THE EVENT.**

### **Enforcement of MARKET Rules and Policies**

The CITY-designated MARKET representative is responsible for overseeing and coordinating MARKET set up and take down on all MARKET days with participating VENDORS, and to make sure the rules of the MARKET are being followed.

**Sherrie Richards**, is the designated City representative for implementing the MARKET policies, and coordinating the day-to-day operation of the MARKET. Sherrie can be contacted as follows:

**s.irene63@yahoo.com (e-mail)**  
920-629-2919 (Personal cell)  
920-973-9160 (Market cell phone)

David Less, CITY Planner, is the CITY contact person and authorized agent responsible for enforcing all rules and regulations regarding operation of the MARKET. He is responsible to oversee the legal operation of the MARKET, and is responsible to resolve any disputes or problems, including inappropriate MARKET conduct, by and between VENDORS.

**Work**  
900 Quay Street  
Manitowoc WI 54220-4543  
(920)686-6931 (telephone)  
(920)686-6939 (fax)  
**dless@manitowoc.org or less3920@tm.net**

If a VENDOR feels they are being harassed by other VENDORS, is being negatively affected by a generator (as defined on p. 8) noise or smell emanating from a VENDOR or a VENDORS equipment or vehicle, or if a VENDOR observes negative behavior of another VENDOR in the MARKET and wishes to report it to the CITY, they are encouraged to contact David Less either in person, or by telephone, fax or e-mail. The anonymity of the complaining party will be protected to the fullest extent possible. If appropriate and to the fullest extent possible, a three (3) person committee including David Less and up to two (2) independently selected MARKET VENDORS will be convened within 96 hours of any incident under this section (other than complaints for which a written warning or complaint is filed by the Manitowoc Police Department under the "VENDOR Conduct" section) to make a final determination of any corrective action required against a VENDOR(S), including issuing warnings, removal from the MARKET, etc.

### **Web Site**

The CITY is responsible for maintaining information on the MARKET at the CITY's website at [www.manitowoc.org](http://www.manitowoc.org).

### **Coalition for Activity and Nutrition (CAN)**

CAN is a consortium of Manitowoc County organizations with a vision to promote and support healthy lifestyles in Manitowoc County. Over the 2013 MARKET season, CAN is planning towards having approximately 8 demonstrations at the MARKET that would address topics including food preservation, food safety, and how to use foods and spices. These demonstrations will be organized by Sherrie Richards.

### **FoodShare / Supplemental Nutrition Assistance Program (SNAP)**

The MARKET now participates in the FoodShare program. This program allows FoodShare or food stamp recipients to buy nutritious food at the MARKET from VENDORS that display a Quest sign. Transactions are completed with an Electronic Benefits Transfer (EBT) card. There is no cost to participate in this program.

This program began at the MARKET in mid-season in 2012, and has been used by several MARKET VENDORS to conduct business with qualified customers. Qualified individuals can buy foods such as bread, cereal, fruits and vegetables, dairy products, and seeds and plants. Participating in this program means greater access to the estimated 3,750 eligible households in Manitowoc County. If you are interested in participating in this program in 2013, contact Sherrie Richards.

### **Location**

The MARKET property is located north of the Manitowoc Public Library, at Quay and 8<sup>th</sup> Street in downtown Manitowoc.

### **Approved VENDORS**

Only VENDORS approved by the CITY may participate and sell products in the MARKET. VENDORS at the MARKET are granted a non-transferable, revocable license to occupy and use display area spaces at the MARKET, subject to the terms set forth herein. An approved VENDOR is a party that meets all of the following requirements: (i) sells product at the MARKET; (ii) has in its possession an "Acknowledgment 2013 MARKET Participation and License Agreement" signed by both the VENDOR and the CITY; (iii) has submitted copies of all relevant certifications and licenses to the CITY; and (iv) has paid all required display area rental fees to the CITY. The term VENDOR includes the individual(s) signing the Acknowledgment and any employees, family members or friends identified in the "VENDOR Information" portion of the Acknowledgment, that will assist the approved VENDOR at VENDOR's authorized location in the MARKET.

### **Sub-Licensing of Vendor Spaces**

*A City-approved VENDOR that wishes to allow a non-authorized party to use his/her space(s) at the MARKET shall first be required to obtain approval from Sherrie Richards, and may only allow a party to occupy and use the VENDOR's display area spaces if the new party is conducting a similar activity to that of the City-approved VENDOR, ie. grower can only make this arrangement with another grower.*

### **Prohibited VENDORS**

VENDOR's who obtain and attempt to re-sell used or secondhand household items, or flea market items at the MARKET are expressly prohibited. Flea market items are defined as commercially mass produced or imported items, wholesale, odd-lot or closeout items, including, but not limited to vintage clothing, furniture, lighting fixtures, toys, paper goods, glassware, linens, books, ceramics, jewelry, dolls, doll clothes, t-shirts, sweatshirts, macrame, pictures, picture frames and any other items that the CITY feels is not appropriate. VENDORS, while selling at the MARKET, are required to be fully clothed and wear proper attire, including shoes and shirts. VENDORS in non-compliance with this section may be removed from the MARKET.

VENDORS are asked to refrain from smoking in the MARKET during hours present, including within any booth or

around customers.

### **Special Note to Artisans and Crafters**

A limited number of artisans and crafters selling hand crafted products are permitted at the 2013 MARKET. Acceptable craft guidelines are as follows:

1. All items must be original and handcrafted by the VENDOR.
2. Items must be safe, have a reasonable life expectancy, and exhibit quality of craftsmanship.

VENDOR's selling processed food items such as baked goods, candy, etc. are not classified as an artisan or a crafter.

Artisan and crafters that participated in the 2012 MARKET shall have preference in terms of the location of display area spaces in the MARKET if their complete application and all fees are filed with the City on or before March 8<sup>th</sup>. **All artisan and crafters that participated in the 2012 MARKET that have their completed applications and all fees filed with the City by Friday, March 8, 2013 shall be accepted into the 2013 MARKET, subject to space availability and the following:** The maximum number of artisans and crafters to be permitted in the 2013 MARKET shall not be more than 20 per cent of the total number of VENDORS filing their application and paying all required fees by March 8th.

### **Assignment of VENDOR Display Area Spaces**

Each VENDOR is limited to occupy and use only those display area spaces approved and designated by the CITY. No single VENDOR or combination of VENDORS shall be permitted to purchase, occupy and use more than two (2) display area spaces in the MARKET, except that VENDORS that participated in the 2012 MARKET that utilized and paid for three (3) or four (4) display area spaces may be entitled to the same number of display area spaces in the 2013 MARKET, if the CITY determines that the additional display area spaces (up to a maximum of two (2) display area spaces) are available, and do not negatively impact the overall mix of VENDORS in the MARKET. All new or first-time VENDORS are allowed a maximum of two (2) spaces. All vehicles and display equipment are required to be located entirely within a VENDOR's designated display area space(s).

The CITY will assign all VENDOR display area spaces at the MARKET. In the assignment of display area spaces, VENDORS who actively participated in the 2012 MARKET will have priority in terms of the location of display area spaces over new or first-time VENDORS. To the fullest extent possible, all VENDOR space assignments will be based on the order in which applications and payments are received at the CITY Planning Department offices, with priority given to those 2012 VENDORS whose application and fee payments and location requests are first received by the CITY on or before Friday, March 8, 2013. All VENDORS filing completed applications and paying required fees after March 8<sup>th</sup>, will be placed on a waiting list, and will not be permitted to enter the MARKET until space becomes available. VENDORS participating in the 2013 MARKET in the "flex space" shall not be given any priority of any type or kind regarding their location or placement in the 2013 MARKET.

### **IMPORTANT NOTE: DISPLAY AREA SPACE(S) WILL NOT BE ASSIGNED TO A VENDOR UNTIL VENDOR HAS DELIVERED TO THE CITY ALL OF THE FOLLOWING:**

1. ***A COMPLETED AGREEMENT INCLUDING THE ATTACHED "ACKNOWLEDGMENT" FILLED OUT AND SIGNED BY THE PARTICIPATING VENDOR;***

2. ***A COMPLETED 2013 VENDOR (SELLER) QUESTIONNAIRE;***
3. ***THE CITY'S RECEIPT OF THE REQUIRED VENDOR FEE PAYMENT;***
4. ***COPY OF ALL REQUIRED VENDOR CERTIFICATIONS, LICENSES, AND GENERATOR SPECIFICATIONS (IF VENDOR PLANS ON USING ANY TYPE OF GENERATOR ON THE MARKET PROPERTY);***
5. ***FOR ARTISANS AND CRAFTERS, PHOTOGRAPHS OF THE TYPE OF ITEMS TO BE SOLD AT THE MARKET; AND***
6. ***THE AGREEMENT HAS BEEN SIGNED AND APPROVED BY THE CITY.***

VENDORS can occupy and use display area space(s) only after the CITY has received both a complete application and payment in full of rental fees as established by the CITY.

For both Tuesday and Saturday MARKET days, **VENDORS are permitted to occupy and use only their designated display area spaces between June 11th and September 21st.** VENDORS may relocate to other available stalls in the MARKET, as long as the VENDOR first contacts the official occupant of those stalls to make sure they are available and not committed to usage, and with the prior approval of Sherrie Richards. In the event a VENDOR fails to occupy and use a display area space(s) for a Tuesday MARKET day by 12:00 P.M., and by 8:00 A.M. on a Saturday morning MARKET day, the VENDOR gives up all rights to the display area space(s) for the day, unless special arrangements have been made between Sherrie Richards and the VENDOR.

### **Flex Space**

The City may authorize, designate and establish not more than one (1) display area "flex space" to be used by un-registered VENDORS who want to participate in either the Tuesday or Saturday MARKET for not more than two (2) days during the 2013 MARKET season. An un-registered VENDOR may only be authorized and scheduled to occupy and use the "flex space" if: (i) each un-registered VENDOR is first approved and authorized by Sherrie Richards; (ii) prior to occupancy and usage of the "flex space", each un-registered VENDOR provides payment in full to the City of \$50; and (iii) each un-registered VENDOR may occupy and use the "flex space" only on the dates first approved by Sherrie Richards, and for not more than a maximum of two (2) MARKET days in 2013. The "flex space" shall be available to growers/sellers of produce, and food sale and preparation vendors, as well as crafters and artisans. Payments issued under this section are non-refundable. VENDORS participating in the 2013 MARKET in the "flex space" shall not be given any priority of any type or kind regarding their location or placement in the 2013 MARKET.

### **VENDOR Notification at End of Selling Period**

Each VENDOR is required to provide written or verbal notice to Sherrie Richards prior to the "END OF SELLING PERIOD" or the date the VENDOR will no longer sell product at the MARKET. For purposes of this agreement, the "END OF SELLING PERIOD" is defined as the date the VENDOR will no longer sell at the MARKET or the date VENDOR is quitting business at the MARKET for the 2013 season. After the END OF SELLING PERIOD and when a VENDOR is no longer actively selling at the MARKET, the CITY-designated MARKET representative may re-assign the display area spaces to another VENDOR.

### **Entering the MARKET**

VENDORS are not permitted to enter the MARKET before 11:30 P.M. for Tuesday MARKET days, and 7:00 A.M.

for Saturday MARKET days, and must be set up and open for business in their assigned display area space(s) before 12:00 P.M. for Tuesday MARKET days, and 8:00 A.M. on Saturday MARKET days. VENDORS agree to make no sales before 12:00 P.M. on Tuesday MARKET days, and before 8:00 A.M. on Saturday MARKET days. Each VENDOR is required to enter the MARKET at the westernmost driveway at Quay Street. No VENDORS are permitted to use the CITY's south riverside park area (located west of the MARKET property) for entering or exiting the MARKET area. When you enter the MARKET, make sure you first check in with Sherrie Richards.

### **Exiting the MARKET**

All VENDORS are required to leave the MARKET property no later than 7:00 P.M. on Tuesday MARKET days, and 3:00 P.M. on Saturday MARKET days, and are expressly responsible for the removal of all garbage, personal items and equipment from their display area space(s). For insurance liability reasons, VENDORS are strongly encouraged to remain at the MARKET in their designated display area space(s) until 6:00 P.M. on Tuesday MARKET days, and 2:00 P.M. on Saturday MARKET days even if they have sold all their goods.

### **Property Maintenance and Utilization**

Each VENDOR is responsible for keeping their VENDOR display area space(s) clean at all times, and must remove all food, litter, scrap litter and garbage/debris before leaving the MARKET property, or be subject to enforcement under the CITY's municipal code. Unsold food products including but not limited to fruits, vegetables, herbs and spice(s), and other refuse must be removed from the MARKET site.

### **Permits and Licenses**

Each VENDOR is responsible to apply and pay for any and all permits, licenses, certifications and fees required by the CITY, Manitowoc County Health Department, and State and Federal agencies. Note that processing and selling food products without a license is a violation of Wisconsin State law. Note the following:

1. VENDORS that are processing food products and selling them at the MARKET must first be inspected and licensed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), Division of Food Safety (608-224-4700 or 4683).
4. VENDORS that want to process and sell non-meat type items must contact the DATCP, Division of Food Safety for a food processing license (608-224-4700 or 4683).
5. VENDORS that want to process chicken booyah, meat dinners or any foods containing meat must contact the DATCP (608-224-4700 or 4683).
6. VENDORS that want to process meals and serve prepared foods at the MARKET must contact the Manitowoc County Health Department (920-683-4155) or [www.healthdepartment@co.manitowoc.wi.us](mailto:www.healthdepartment@co.manitowoc.wi.us)
7. VENDORS are not permitted to sell anything that has been heated, juiced, pickled, canned, baked or dried without first obtaining a license and an approved kitchen. VENDORS are required to contact the Manitowoc County Health Department.

### **Sales Tax**

Department of Revenue – Sales and Use Tax (Chapter 11, Wisconsin Administrative Code) and specifically Tax 11.53(1)(a) "Temporary Events", requires that VENDORS participating in temporary events such as a farmers market are required to obtain a mobile seller's permit if the event is not held at the retailers fixed business location, which is the case for the MARKET. Section Tax 11.53(3) further states that *persons, other than nonprofit organizations, not required to hold a seller's permit who have total taxable gross receipts from sales of tangible personal property or taxable services of less than \$1,000 during a calendar year are not required to hold a seller's*



*permit or mobile seller's permit.* In other words, if your total taxable gross sales at the MARKET in 2013 are less than \$1,000, there is no reporting of sales tax required. ***VENDORS are responsible to check with the WI Department of Revenue to determine your status, and if a seller's permit or if a sales tax number is required or not.***

Each VENDOR is responsible for collecting and reporting any required sales tax. A summary of agencies to contact for license information and requirements is attached. The license information is believed to be accurate, but not warranted. Each VENDOR is responsible to make sure they are licensed correctly, and are responsible for their own tax, permits and license liabilities.

If a VENDOR anticipates exceeding the \$1,000 gross sales threshold at the MARKET, the VENDOR will need to obtain a sales tax number from the Wisconsin Department of Revenue.

Sales tax violations may result in the VENDOR not being permitted to participate in the MARKET for the remainder of the 2013 season. The VENDOR is solely responsible for damages or personal injury resulting from VENDOR display at the MARKET.

### **CITY's Remedies for Breach**

Violation of any material provision of the AGREEMENT is a material breach by the VENDOR. Upon notice by the CITY to the VENDOR of the occurrence of a breach or default during the MARKET, and failure of the VENDOR to correct the breach within a reasonable time, the VENDOR agrees to remove personal equipment, clean the area, and vacate the MARKET premises. Failure to vacate the MARKET property may subject the VENDOR to civil and criminal remedies, including, but not limited to, remedies for civil and criminal trespass.

### **Covenant Not to Sue**

The VENDOR will not institute any action or lawsuit against the CITY, or the CITY's agents or employees as a result of operation under the AGREEMENT. The VENDOR will not aid in the institution or prosecution of any claim for damages, costs, loss of service, expenses or compensation, for, or on account of any damages, loss or injury to person or property as a result of operation under the AGREEMENT.

### **Indemnification**

The VENDOR hereby agrees to indemnify and hold harmless, release, waive and forever discharge the CITY, its employees, agents, officers and Riverland Ag Corp. (the "PARTIES"), for all bodily and personal injuries, including injuries resulting in death and property damage, claims, actions, damages, liabilities and expenses, including reasonable attorney's fees and court costs, which may occur as a result of a VENDOR'S participation in the MARKET, whether or not caused by a negligent act or omission of the above referenced PARTIES, its employees, agents or officers.

### **Insurance**

The CITY carries no insurance coverage for individual VENDORS. Each VENDOR is responsible to provide their own liability insurance coverage for operation at the MARKET, and must be prepared to present it in the MARKET. The CITY's general liability insurance at the MARKET property does not protect VENDORS utilizing the property.

***Cautionary Note: As a general rule, the typical farm liability policy does not provide protection for activities which happen off the farm premises, such as at the MARKET. In addition, the policy may treat sales at the MARKET as a business activity not covered by the farm liability policy. This means that to be covered for sales at the MARKET, a separate commercial policy may have to be purchased. The same may be true for any general liability or umbrella policies. All VENDORS are required to make sure their insurance coverage includes the conduct of business at the MARKET. Consult your insurance agent.***

### **No Refund of Fees**

No portion of any MARKET participation fee paid to the CITY will be refunded, unless the CITY reduces the number of display area spaces previously paid for by a VENDOR. Other than this exception, all payments are final. Sherrie Richards, as the CITY's designated MARKET representative, reserves the right to re-assign display area spaces during the 2013 season, if those spaces are not used by a VENDOR and become available on a particular MARKET day.

### **Health and Safety Requirements**

All items intended for human consumption must be kept off the ground at all times, and be in safe and sound conditions. VENDORS providing food for consumption at the MARKET are required to provide their own garbage collection system, and to remove said garbage from the MARKET by no later than 7:00 P.M. on Tuesday MARKET days, and 3:00 P.M. on Saturday MARKET days.

The VENDOR is solely responsible for damages resulting from the sale of unsafe or unsound goods. No potentially hazardous foods are allowed to be sold. The VENDOR is solely responsible for making sure that VENDOR complies with all local, State and Federal licensing requirements and regulations.

### **Power, Equipment and Supplies**

Each VENDOR must supply their own tables and other display equipment, as well as canopies, umbrellas and other weather protection devices. VENDORS are responsible to secure canopies and other weather protection devices on each leg of the device, and are expressly prohibited from drilling holes or permanently attaching part of their display into the surface of the MARKET parking lot. No electricity for VENDORS will be available at the MARKET, unless expressly authorized by the CITY. VENDORS must follow the "Rules for Outdoor/Indoor Events Involving Cooking" if applicable to the VENDOR's operation.

For the 2013 MARKET, the term "generator" is defined as a machine that generates noise, vapor or gas, and includes air compressors, refrigeration units, and the like. Generators shall be permitted at the MARKET as long as they are deemed suitable. However, all generators whether electric, diesel or gas, are required to first be authorized by the CITY Planning Department before a VENDOR shall be permitted to operate a unit at the 2013 MARKET. The suitability of a generator shall be determined based upon the Department's review of the generator manufacturer's specifications. Generators shall be allowed to run while located on the MARKET property as long as they do not exceed a 10-minute average noise level of 65 decibels (dBA) measured at 15 feet from the generator unit. If a VENDOR wishes to use a generator that exceeds the 65 decibel level, they shall only be permitted to operate and run the generator: (i) at the VENDOR's designated display area spaces but only prior to 8:00 A.M. on Saturday MARKET days, and prior to 12:00 P.M. on Tuesday MARKET days; (ii) at an alternative location on the MARKET property during active MARKET hours; or (iii) at a location not on the MARKET property Tuesday between 12:00 P.M. and 6:00 P.M., and Saturday between 8:00 A.M. and 2:00 P.M.

### **Scales**

Scales are subject to inspection. If selling goods by weight, a VENDOR must supply a certified, legal for trade, scale (weighing and measuring devices) which may be subject to periodic inspection, and which must be calibrated and accurate, and acceptable to the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). The VENDOR is solely responsible for contacting the Weights and Measures division of DATCP (608-224-4945) regarding certification of scales, and for making sure their scale is calibrated correctly, and in full compliance with DATCP requirements. See the "License/Permit Information" sheet (attached) if you need assistance in determining if your scale is allowed by DATCP.

Violations of DATCP requirements may result in the VENDOR not being permitted to participate in the MARKET for the remainder of the 2013 season. The VENDOR is solely responsible for damages or personal injury resulting from VENDOR display at the MARKET.

Only scales allowed pursuant to Administrative Code, Agriculture, Trade & Consumer Protection (Chapter ATCP 92 Wisconsin Administrative Code) regarding weights and measures are permitted at the MARKET. Scales with

calibration dates of more than one (1) year previous to the current MARKET date are not allowed at the MARKET. Use of a non-approved scale and/or use of a non-calibrated scale may result in the VENDOR not being permitted to participate in the MARKET for the remainder of the 2013 season.

### **Portable Toilet Facilities and Barricades**

The CITY is responsible to provide at least one (1) portable toilet, and barricades for usage at the MARKET property. Sherrie Richards is responsible to oversee that these elements are installed, removed, secured, and located correctly on the MARKET property, and that all items removed from the shed at the MARKET are returned to the shed at the close of the MARKET day, and that the shed is locked and secured. Please offer your assistance to Sherrie in this matter.

### **VENDOR Conduct**

The MARKET is intended to be a safe, friendly, and family-oriented environment. Any VENDOR that is violent, profane, retaliatory or prejudicial towards fellow VENDORS or the general public will not be tolerated by the CITY. Any VENDOR who is issued a written warning or complaint from the Manitowoc Police Department for inappropriate conduct at the MARKET, may have their right to participate in the MARKET immediately revoked for the remainder of the 2013 season. All parties cited in any written warning or complaint may be required to immediately vacate the MARKET.

### **Pets Prohibited**

Pets are not permitted at the MARKET. The CITY will post signs at the MARKET to clarify this prohibition to both VENDORS and the general public.

Rundate: 1/31/2012

Filename: Y:\Dave\farmmarket2013infopolicies.doc