

AGREEMENT FOR MANAGEMENT SERVICES
2016 MANITOWOC FARMERS' MARKET

Agreement ("Agreement") by and between The City of Manitowoc, Wisconsin, a municipal corporation ("City"), 900 Quay Street, Manitowoc Wisconsin 54220-4543, and Amber L. Daug's ("Contractor"), 108 Riverview Drive, Manitowoc Wisconsin 54220. The City and Contractor being sometimes also hereinafter referred to individually as a "Party" or collectively as the "Parties".

RECITALS

1. Since 2001, the City has sponsored, managed and continues to be financially accountable for the operation of the Manitowoc Farmers' Market ("Market") at its current location in the City which is legally described as follows ("Market Property"):

A parcel of land located in the Northwest One Quarter (NW¼) of Section 29, Township 19 North, Range 24 East in the City of Manitowoc, more particularly described as follows: All of Lots Numbered One (1), Two (2), Three (3) and Four (4) in Block 219, and Lots Three (3), Four (4), Five (5) and Six (6) in Block Numbered Two Hundred Twenty (220), plus Vacated So. 7th Street, in the Original Plat of the City of Manitowoc, Manitowoc County, Wisconsin.

Tax Identification No. 000-219-010

2. The City is authorized to use the Market Property for the Market pursuant to Section 4.1.1. of a "Ground Lease" with Riverland Ag Corp., effective May 24, 2012, having now been assigned to Briess Malting.
3. Since 2001, the City Planning Department has served as the City's agent to oversee and coordinate administering the organizational and financial responsibilities related to the Market, including but not limited to the collection of rental fees from individual vendors leasing space in the Market, the direct payment of operating costs related thereto, and contracting with an individual to manage the Market ("Contractor").
4. The Contractor is responsible for: (i) supporting the long term growth and success of the Market; (ii) providing development and support of the Market to enhance the Market's role as a civic resource; (iii) connecting and promoting local and regional producers and farmers with the greater Manitowoc community; and (iv) supervising, directing, controlling and

coordinating the Market during the 2016 calendar year, with said Contractor responsible for providing on-site coordination of the Market, promotion of the Market to the community, coordinating special events, and serving as a liaison between the Market vendors and the City.

5. The Community Development Director is the party authorized to act as the City's agent under this Agreement.

NOW, THEREFORE,- in consideration of the covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

Section 1. Incorporation of Recitals. The above referenced recitals are deemed true and correct.

Section 2. Management of the Market. With respect to the Market, the City hereby authorizes the Contractor to manage the day-to-day operations of the Market pursuant to, and in accordance with the most current vendors' guidelines for operation of the Market. For purposes of this Agreement, managing the day-to-day operations includes all rights of ingress and egress to the Market Property, as well as those activities outlined in the recitals. Contractor has budgetary authority to expend monies for the purposes of the Market or other expenditures related to the operation of the Market. The Contractor is not authorized to set, revise, collect, hold and disburse rents or other fees, charges, deposits and other payments with respect to the Market.

Section 3. Compensation. The City agrees to provide the Contractor the sum of \$6,025.00 (the "Payment") for all services rendered under this Agreement. Services shall be rendered beginning the effective date of this Agreement through and including October 29, 2016. The Payment will be payable to the Contractor as follows:

<u>Date of Payment</u>	<u>Payment Amount</u>
June 3, 2016	\$1,136.00
July 1, 2016	\$1,136.00
August 5, 2016	\$1,136.00
September 2, 2016	\$1,136.00
October 7, 2016	\$1,136.00

The Contractor 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.

Section 4. Duration. This Agreement shall be valid and enforceable from the date the Agreement is fully executed, through and including October 29, 2016. This Agreement

shall automatically terminate at 12:01 A.M. on October 30, 2016, or an earlier date if any of the following events occur: (i) the City is not authorized to utilize the Market Property for the 2016 Market; (ii) upon seven day written notice by the City or the Contractor to the other party; (iii) if all or any part of the 2016 Market is not held for whatever reason, the date of termination shall be the last day the Market is open and operational in 2016 ("Last Day"), with the City to pay the Contractor a prorated payment under Section 3. for services rendered up to and through the Last Day; or (iv) if the Contractor fails or is unable to perform its duties under this Agreement, the City may terminate this Agreement upon seven day written notice to the Contractor with the City to pay the Contractor a prorated payment under Section 3. for services rendered up to and through the date of termination. All notices shall be issued in accordance with Section 10. of this Agreement.

Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement shall terminate and have no further force or effect; provided however, the termination of this Agreement shall not limit or affect any remedy at law or in equity that the City may have against the Contractor with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination.

Section 5. Breach Shall Not Permit Termination. It is expressly agreed that a breach of this Agreement shall not entitle the City or the Contractor to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which the City and/or the Contractor may have hereunder by reason of any breach of this Agreement.

Section 6. Claims and License; Injury and Property Damage. During the term of this Agreement, the Contractor agrees to protect, defend, indemnify and hold the City, its officers, agents and employees free and harmless from and against any and all claims of third parties which result in losses, penalties, damages, settlements, costs, charges, professional fees, attorney's fees, or other expenses or liabilities in connection with or arising directly or indirectly out of the Contractor's obligations under this Agreement. In no event shall the Contractor be liable for or have any indemnification obligations for any losses, damages, costs, fees, expenses, etc. arising out of the City's negligence or failure to perform its obligations under this Agreement. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, environmental claims, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder.

Section 7. Notice and Right to Cure. A material default or material breach (whether material default or material breach, hereinafter referred to as a "breach") of this

Agreement shall be defined as the failure of the parties to perform any material term, covenant, condition, warranty or promise of this Agreement required to be performed by the City or the Contractor.

In the event of any breach of this Agreement or any of its terms or conditions by either the City or the Contractor, such party shall, upon written notice from the other, proceed immediately to cure or remedy such breach, and in any event shall cure any such default or breach within 30 consecutive calendar days of the receipt of such notice, if such breach is of a nature that can be reasonably cured within such 30 day period. If such breach is of a nature that cannot be reasonably cured within such 30 day period, such party shall have commenced such cure and shall be diligently pursuing the same. In the case such action is not taken or is not diligently pursued, the aggrieved party may have available the remedies provided for herein, however, it is expressly agreed that a breach of this Agreement shall not entitle the parties to terminate this Agreement.

Section 8. Additional Remedies. In the event of any breach of this Agreement which has not been cured in accordance with Section 7., the non-breaching party may utilize any remedies the parties may have at law or in equity. In the event that any party shall breach any of its obligations under this Agreement and shall not cure or remedy such breach, or commence to diligently pursue the same as provided in Section 7., and following notice as provided above, then the non-breaching party shall have the right to institute any other actions or proceedings as it may have available at law or equity if it deems desirable for effectuating the purposes of this Agreement, provided that any delay by the non-breaching party in instituting or prosecuting any such action or proceedings or otherwise asserting its rights under this section shall not operate as a waiver of such rights or to deprive it of, or, to limit such rights in any way (it being the intent of this provisions that the non-breaching party should not be constrained, so as to avoid the risk of being deprived of, or limited in the exercise of the remedy provided in this section because of concept of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the breach created by the default involved); nor shall any waiver in fact made by the non-breaching party with respect to any specific default by the other party under this section be considered or treated as the waiver of the rights of the non-breaching party with respect to any other defaults by the other party under this section, or with respect to the particular default except to the extent specifically waived in writing.

Section 9. Rights and Remedies Cumulative. The rights and remedies of the City and the Contractor, whether provided at law or in equity, or 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 breach or of any remedies for any other event of breach by the other parties. No waiver made by the City or the Contractor with respect to the performance, manner or time of any obligation of any party under the Agreement, shall be considered a waiver of any rights of the City or the Contractor to enforce any other obligations of the parties

under this Agreement. A delay of any party in the enforcement of any term, covenant, condition, warranty or promise contained in this Agreement shall not be construed as a waiver of any party's right to enforce said obligations.

Section 10. Notice and Demands. A notice, demand or other communication hereunder shall be deemed to have been sufficiently given by any party to another party under this Agreement when personally delivered, faxed, sent electronically, mailed by first class or registered or certified mail, postage prepaid, addressed to the City or the Contractor, as the case may be, and:

- (a) In the case of the Contractor, address to or delivered personally to:
Amber L. Daus
108 Riverview Drive
Manitowoc Wisconsin 54220

- (b) In the case of the City, address to or delivered personally to:
City of Manitowoc
ATTN: Community Development Director
900 Quay Street
Manitowoc Wisconsin 54220-4543

The above addresses may be changed at any time by the parties by notice given in the manner provided above. The parties further agree that electronically reproduced signatures such as by facsimile transmission are valid for execution or amendment of this Agreement, and that electronic transmission and facsimile transmission are authorized forms of notice as that term is used in this Agreement.

Section 11. No Liability to the City. The City shall have no obligation or liability to any third party under contract or retained by the Contractor in the performance of the Contractor's obligations and responsibilities under this Agreement. The Contractor specifically agrees that no representations, statements, assurances, or guarantees will be made by the Contractor to any third party or by any third party which is contrary to this provision.

Section 12. Section Headings. Section headings have been inserted in this Agreement primarily for convenience. If they conflict with the text, the text shall control.

Section 13. Pronouns. Pronouns in this Agreement (including, but not limited to, those referring to the Contractor), importing any specific gender shall be interpreted to refer to corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require. Pronouns, verbs, and/or other words in this Agreement importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.

Section 14. Severability. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

Section 15. Time of Essence. Time is of the essence of this Agreement and of every term, condition, or covenant to be performed by the City and the Contractor.

Section 16. Conflicts. If the provisions of any agreement, contract, note, mortgage, security agreement, or other document between the parties hereto conflict with the provisions of this Agreement, the provisions of this Agreement shall control unless the City determines otherwise.

Section 17. Relationship of Parties. Nothing in this Agreement nor any act of the Contractor or the City shall be deemed or construed to create any relationship of third party beneficiary, of employee or employer, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.

Section 18. Binding Effect of Agreement. This Agreement shall bind and inure to the benefit of, and be enforceable by or against, the parties hereto and/or their respective representatives, successors, or assigns.

Section 19. Inspection of Records. 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 the Contractor hereunder, and which are expressly related to this Agreement.

Section 20. Amendments. This Agreement can only be modified or changed in writing if executed by the City and the Contractor.

Section 21. Survival of Warranties, Representations and Agreements. Any warranty, representation or agreement herein contained shall survive the date of this Agreement.

Section 22. Applicable 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 laws of the State of Wisconsin. 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.

Section 23. Integration and Conflicts. If the provision of any lease, agreement, contract, note, mortgage, security agreement, or other document between the Contractor and the Contractor or any other third party entity (other than the City) conflicts with the provision of this Agreement, the provisions of this Agreement shall control.

Section 24. Date. This Agreement shall be dated, effective and binding as of the date of the last execution.

CONTRACTOR

Amber L. Daug
Amber L. Daug

4/28/2016
Date

STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

Personally came before me this 28th day of April, 2016, the above signed Amber L. Daug, to me known who executed the foregoing instrument in her individual capacity.

Lisa M. Mueller
Notary Public - Lisa M. Mueller
Manitowoc County, Wisconsin
My Commission
(expires)(is) 9-8-2019

CITY OF MANITOWOC, WISCONSIN

Justin M. Nickels
Justin M. Nickels, Mayor

4/29/16
Date

Jennifer Hudon
Jennifer Hudon, City Clerk

4/29/16
Date

STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

Personally came before me this 2 day of May, 2016, the above signed Justin M. Nickels and Jennifer Hudon, to me known who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc, Wisconsin, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

Deborah Neuser

Notary Public

Manitowoc County, Wisconsin

My commission

(expires)(is) 8-17-18



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