

Jim
4-24-17

AGREEMENT FOR MANAGEMENT SERVICES
2017 MANITOWOC FARMERS MARKET

This Agreement ("Agreement") is entered into by the City of Manitowoc, Wisconsin, a municipal corporation ("City"), 900 Quay Street, Manitowoc Wisconsin 54220-4543, and Grow It Forward Inc, a Wisconsin 501(c)3 charitable organization ("Contractor"), 108 Riverview Drive, Manitowoc, Wisconsin 54220, for Management Services for the 2017 Manitowoc Farmers Market ("Market").

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

I. Scope and Intent of Agreement

- A. This Agreement establishes responsibilities for management of the Manitowoc Farmers Market for the 2017 season. Management of the Market is defined as:
 - 1. Operating the Saturday and Tuesday Market events with on-site presence, preparation, and follow-up.
 - 2. Addressing all issues and concerns that arise relative to the operation of the Market.
 - 3. Establishing, participating in, and facilitating the meetings of the Farmers Market Committee.
 - 4. Collecting and managing the funds generated by the Market, and utilizing those funds for operations and improvements.
 - 5. Overseeing and actively working to improve the Market as a whole.
- B. This Agreement represents a transition of additional management and oversight responsibilities, as compared to past years, from the City to the Contractor, and therefore includes greater compensation, additional financial responsibilities, and increased accountability for the Contractor.

II. City Responsibilities

- A. Market Locations. The City shall allow access to one or more public locations, as selected by the City, at which the Market may be held. Operation of the Market at said locations must be in compliance with applicable City policies and regulations. Since 2001, the Market has operated at its current location in the City which is known as Tax Parcel 000-219-010 (or "720 Quay Street"). Regarding 720 Quay Street:

1. The City will continue to make it available for operation of the Market as long as the City holds a valid ground lease with the property owner authorizing such use.
 2. The City retains the right to make available alternate locations should other uses allowable under the ground lease be determined by the City to take priority over operation of the Market. The City will provide at least 90 days' notice to the Contractor if such a determination is made after execution of this Agreement.
 3. On December 5, 2016, the City executed a parking lease for 50 spaces at 720 Quay Street. This parking lease does not reserve parking spaces on Saturdays, so the Saturday Market is not affected. The Tuesday afternoon market shall not operate in a way that interferes with the leased parking spaces.
- B. General Liability Insurance. The City shall maintain general liability insurance that covers the Market locations.
- C. Oversight and Support. The City shall provide general oversight and support to the work of the Contractor to manage the Market. Examples of such oversight and support would include, but are not limited to, participation of an Alderperson on the Farmers Market Committee, City staff contacts to help resolve issues and needs of the Market as they arise, participation of a City staff member on the Farmers Market Committee, and as staff workload allows, City staff assistance with grant applications for funding of significant Market improvements.
- D. GIS Mapping. The City shall provide Geographic Information System (GIS) mapping services in support of the annual placement of vendor stalls.
- E. Property Maintenance. The City shall provide property maintenance for the Market locations in accordance with normal City maintenance procedures for the facility on which the Market is located. Specifically, 720 Quay Street will be maintained consistently with City parking lots throughout the City. As another example, if the Market is approved to utilize a City park, that location would be maintained consistently with City parks throughout the City.
- F. Agent. The Community Development Director is the party authorized to act as the City's agent under this Agreement.

III. Contractor Responsibilities

A. Operate the Market. The Contractor shall:

1. By April 1 of each year, hold an annual vendor meeting to prepare for the upcoming season, share information, distribute vendor application packets, elect representatives for the Farmers Market Committee, and conduct other annual Market business.
2. By May 1 of each year, collect vendor fees and establish the vendor stall layout.
3. Provide on-site supervision of the Market for each Saturday and Tuesday event. Ensure that vendors locate in the correct stalls for each Market event.
4. Ensure the provision of adequate facilities for each Saturday and Tuesday event including restrooms and sinks. Also consider the provision of adequate parking and signage.
5. Provide reasonable options for transaction infrastructure such as Supplemental Nutritional Assistance Program (SNAP) and debit and credit card transaction purchases in exchange for Scrip Tokens.
6. Oversee vendor activities and enforce the provisions of the Vendor Agreement, calling on the assistance of other agencies for support as appropriate.
7. Coordinate with the City on special events that involve or impact the Market.
8. Advertise the Market in appropriate venues and media.
9. Provide English language translation services, when necessary, for communication with Market vendors.

B. Address Issues and Concerns. The Contractor shall respond to issues and concerns that arise from vendors, the City, or community members. The Contractor shall establish and maintain open communication with all market stakeholders calling on the assistance of other agencies for support as appropriate.

C. Farmers Market Committee. The Contractor shall establish and maintain the Farmers Market Committee. The Contractor's Market Manager shall participate in and facilitate the meetings of the Committee. The Contractor shall be responsible for ensuring the Farmers Market Committee complies with open meetings laws while the market is still a City function. The City will provide legal counsel to assist with this upon request.

D. Manage Market Funds. The Contractor has budgetary authority to expend monies for the purposes of the Market. The Contractor is

authorized to set, revise, collect, hold, and disburse rents or other fees, charges, deposits, and other payments with respect to the Market. The Contractor shall:

1. Create an annual budget, and within reason, follow the line items of the annual budget with all expenditures.
2. Compensate its Market Manager.
3. Utilize fees collected from vendor stall rentals to pay for the operating requirements of the Market.
4. Limit total annual spending to no more than the amount of revenues available.
5. Account for the use of all Market funds and, where practical in the use and accounting of Market funds, maintain separation between Market funds and the funds of the Contractor's other programs.
6. Provide quarterly financial statements to the City no later than July 31, 2017, October 31, 2017, and January 31, 2018, and provide a professionally prepared annual financial statement to the City by March 31, 2018.

E. Annual Report. Each year, between January and April, provide a report and update to the City of Manitowoc Finance Committee.

F. Improve the Market. The Contractor was selected because of its organizational alignment with the vision for the Market. The Contractor shall work toward the continuous improvement of the Market to support its long term growth and success. The Contractor shall develop and implement strategies related to:

1. Actively recruiting new vendors and attracting customers.
2. Actively maintaining and updating, in collaboration with Market vendors, Market policies and regulations.
3. Establishing protocol for meaningful enforcement measures for infractions of Market policies and regulations.
4. Enhancing the Market's role as a civic resource, especially in relation to the surrounding downtown environment.
5. Connecting and promoting local and regional producers and farmers with the Manitowoc community.
6. Connecting with other local food initiatives throughout the Manitowoc community.
7. Exploring opportunities for expansion of the Market through such means as a night market, food truck rally, or winter market.

IV. Compensation

- A. 2017 Season. For the 2017 Market season, because the City is collecting the vendor stall rental fees during this period of transition, the City agrees to provide the Contractor the sum of \$5,965.00 for all services rendered under this Agreement. Services shall be rendered beginning the effective date of this Agreement through and including October 28, 2017. Compensation will be payable to the Contractor in five monthly installments of \$1,193.00 paid on the first Friday of each month starting on June 2, 2017.
- B. Future Seasons. If this Agreement is renewed in the future, compensation by the City will discontinue. It is anticipated for future seasons that the Contractor will take over the collection of vendor stall rental fees, and the Contractor will set its level of Market Manager compensation within its annual budget. The Contractor would then be responsible for the handling of all operating revenues and expenses related to the Market.
- C. Independent Contractor. The Contractor is not a City employee. 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. The City will not provide liability coverage for the operations of the Market Manager.

V. Farmers Market Committee

- A. Contractor Responsibility. The Contractor shall:
 - 1. Establish and maintain the Farmers Market Committee ("Committee").
 - 2. Convene and facilitate regular meetings of the Committee.
 - 3. Facilitate the creation and adoption of a set of rules and by-laws to govern the Committee.
 - 4. Provide ongoing educational support to the Committee.
- B. Committee Composition. The Committee shall consist of nine members including five Market vendors, the Market Manager, one downtown business or community institutional (e.g., museum, performance center, etc.) representative, one City of Manitowoc Alder, and one City of Manitowoc staff official as an ex-officio member, each with a one-year term.

- C. **Committee Structure and Role.** The Committee shall adopt and be governed by a set of rules and by-laws and shall report to the Contractor's Board of Directors. The Committee shall be considered a sub-committee of the Contractor's Board of Directors and shall be delegated certain decision making and certain advisory authority. The Committee shall serve as the Board of Trustees of the Market Surplus Funds account, and its recommendations on expenditures of the Market Surplus Funds are not effective until ratified by the Contractor's Board of Directors and the City of Manitowoc Common Council. Approval of Committee recommendations on expenditures of the Market Surplus Funds shall not be unreasonably withheld by the Contractor's Board of Directors.
- D. **Market Oversight Responsibility.** The Committee shall maintain a charter or purpose statement and supporting goals for the Market. The Committee shall be responsible to monitor the overall success and effectiveness of the Farmers Market and to make decisions and recommendations that support its long term success.
- E. **Committee Decision Making Authority.** The Committee shall have the authority to set policy and make decisions on the following matters. These decisions do not need to be ratified by the Contractor's Board of Directors:
1. The dates of the Market season and times of operation.
 2. All procedures and rules related to vendor arrival, setup, re-supply, and departure.
 3. Any market policies that may impact vendor eligibility to participate in the market such as organic labeling, insurance requirements, eligible products, wholesalers, and subletting of vendor stalls.
- F. **Committee Advisory Authority.** The Committee shall have the authority to make recommendations to the Contractor's Board of Directors on the following matters:
1. The Committee rules and by-laws.
 2. Annual vendor stall rental fees.
 3. The Market's annual operating budget.
 4. Any plan for future locations of the Market.
 5. Other components of the vendor application and agreement not addressed in item V.E. (Committee Decision Making Authority).
 6. The layout of the Market and placement of vendors.
 7. Any proposed expenditure of the Surplus Market Funds, the approval of which shall not be unreasonably withheld by the Contractor's Board of Directors.

VI. Transfer of Farmers Market Funds

- A. **2017 Operating Funds.** After all vendor stall rental fees have been paid to the City for the 2017 Market season, the annual operating funds will be transferred by the City to the Contractor less any expenses and commitments to pay made by the City for the 2017 Market season. Specifically, the total amount of Contractor compensation under IV (Compensation) of this Agreement and any operating expenses paid or due for payment will be deducted from the amount to be transferred. In addition, \$2,500 from the Market Surplus Funds defined in VI.C of this Agreement will be transferred to the 2017 operating funds. Contractor shall use these funds to pay for the Market operating requirements remaining for the 2017 season.
- B. **Future Operating Funds.** If this Agreement is renewed, it is anticipated for future seasons that the Contractor will take over the collection of vendor stall rental fees, and the Contractor would then be responsible for the handling of all operating revenues and expenses related to the Market. No further operational funds will be provided by the City after the 2017 season.
- C. **Market Surplus Funds.** In past years, the City has not charged the full cost of management and administration for the Farmers Market. As a result, revenues in excess of annual expenditures have accumulated in a designated Farmers Market account. These funds are hereby defined as the "Market Surplus Funds." The Market Surplus Funds shall be managed as follows:
1. The Contractor shall establish a Trust Account to hold the Market Surplus Funds and agrees to manage that account according to this Agreement and the rules and by-laws of the Committee.
 2. The City shall transfer the Market Surplus Funds, less the Holdback Amount defined in VI.D. (Holdback Amount), less the total remaining compensation due to the Market Manager under the "Agreement for Marketing and Planning Services, 2017 Farmers Market" executed February 21, 2017, and less a \$2,500 transfer to 2017 operating funds, to the Trust Account.
- D. **Holdback Amount.** As a measure of accountability, the City shall retain in its designated Farmers Market account \$25,000 from the Market Surplus Funds. This Holdback Amount will not be transferred to the Trust Account at this time, but retained in case the transition of Market management to the Contractor is not successful. If this Agreement with the Contractor is renewed, or a similar agreement with the Contractor executed, for two additional years (i.e., the 2018 and 2019 Market

seasons), then upon execution of the agreement for the 2019 Market season, the Holdback Amount will be added to the Trust Account.

VII. Duration and Renewal

- A. Duration. This Agreement shall be valid and enforceable from the date the Agreement is fully executed, through and including December 31, 2017. This Agreement shall terminate on January 1, 2018, or an earlier date, if any of the following events occur:
1. The Agreement is not renewed.
 2. Upon 30 day written notice by the City or the Contractor to the other party.
 3. If all or any part of the 2017 Market is not held for whatever reason. In this case, the date of termination shall be the last day the Market is open and operational in 2017, with the City to pay the Contractor a prorated payment for services rendered up to and through the last day.
 4. If the Contractor fails or is unable to perform its duties under this Agreement. In this case, the City may terminate this Agreement upon seven day written notice to the Contractor with the City to pay the Contractor a prorated payment for services rendered up to and through the date of termination.
- B. Renewal. City and Contractor shall have the option to renew this Agreement for one additional Market season extending through and including December 31, 2018. Upon successful completion of the 2018 Market, Contractor shall have the option to renew for the Market season extending through and including December 31, 2019. Contractor shall notify City at least thirty days prior to the expiration of this Agreement in the event Contractor wishes to renew this Agreement on such terms as may be mutually agreeable to City and Contractor. Nothing in this Agreement, however, shall be construed to require renewal of this Agreement on any terms by either party.

VIII. Notice and Right to Cure

A material default or material 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 10 consecutive

calendar days of the receipt of such notice, if such breach is of a nature that can be reasonably cured within such 10 day period. If such breach is of a nature that cannot be reasonably cured within such 10 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.

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, 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:

In the case of the Contractor, address to or delivered personally to:

Grow It Forward Inc.
Attn: Amber L. Daus
108 Riverview Drive
Manitowoc Wisconsin 54220

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 email are valid for execution or amendment of this Agreement, and that electronic transmission is an authorized form of notice as that term is used in this Agreement.

IX. 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.

X. 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.

XI. 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. The Contractor shall provide all records to the City at the termination of this Agreement before final payment is rendered. All records created under the scope of this agreement shall be the property of the City.

XII. Amendments

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

XIII. 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.

XIV. Date

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

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GROW IT FORWARD INC.

CITY OF MANITOWOC, WISCONSIN

Amber L. Daus, Chief Executive Officer

Justin M. Nickels, Mayor

Ronald J. Kossik, Board Chair

Jennifer Hudon, City Clerk

Date

Date

STATE OF WISCONSIN)
)ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of _____, 2017, the above signed Amber L. Daus, to me known who executed the foregoing instrument in her individual capacity.

Notary Public
Manitowoc County, Wisconsin
My Commission (expires)(is)_____

STATE OF WISCONSIN)
)ss.
MANITOWOC COUNTY)

Personally came before me this _____ day of _____, 2017, 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.

Notary Public
Manitowoc County, Wisconsin
My Commission (expires)(is)_____