

**LICENSE AGREEMENT BY AND BETWEEN
TOWN OF FALMOUTH
AND
CUMBERLAND FARMERS' MARKET ASSOCIATION**

THIS LICENSE made this ____ day of _____, 2020, by and between the **TOWN OF FALMOUTH**, a municipal corporation located in Cumberland County, State of Maine (hereinafter the "**TOWN**") and **CUMBERLAND FARMERS' MARKET ASSOCIATION**, with a mailing address of c/o Vicki Marion, 29 Linnell Road Windham, ME 04062.

W I T N E S S E T H:

WHEREAS, TOWN recognizes **LICENSEE** as being responsible for the coordination, implementation, and administration of all of the Cumberland Farmers' Market Vendors (hereinafter "Vendors") at the Cumberland Farmers' Market; and

WHEREAS, the TOWN is willing to permit such use in conjunction with the Cumberland Farmers' Market so long as adequate protections are maintained for the **TOWN** and its citizens;

NOW THEREFORE, the parties do hereby agree as follows:

1. Permit for Use of Town/Private Property.

TOWN agrees to permit **LICENSEE** to operate a farmers' market (hereinafter "market") as follows:

A. May 13 through Mid-October, Wednesdays 10:00 AM to 2:00 PM at 23 Hat Trick Drive, utilizing portions of Map Lot U52-005 and as further depicted on the attached site plan as Exhibit 1.

2. Vendor Present and Products to be sold.

A list of vendors for each market location, their member status and the products to be sold is attached hereto as Exhibit 2.

Notwithstanding the approved list of vendors in Exhibit 2 the **LICENSEE** may allow up to two additional itinerant vendors (day tables) at any given occurrence of the market.

3. **Conditions of Town Property (hereinafter referred to as “PREMISES”) and public rights of way.**

- A. **LICENSEE** agrees to maintain the **PREMISES** in a clean and orderly fashion and to remove from the **PREMISES** all trash and debris resulting from vending activities.
- B. **LICENSEE** agrees to maintain the activities of the market in a peaceful and orderly fashion.
- C. **LICENSEE** will not utilize any improvements on the **PREMISES**.
- D. For any off-premises signage that is installed along the **TOWN** public Rights-of-ways, the applicant shall be responsible for ensuring that any installed signage does not interfere with public access and public safety. If the **TOWN** deems that any signage is interfering with access, mobility, vehicular-bicycle-pedestrian sight-distance, etc., the signage shall be removed and relocated accordingly in a timely manner by the applicant.
- E. The Cumberland and Falmouth Farmers Market Association will adhere to the Maine Department of Agriculture, Conservation and Forestry’s guidelines for farmers marketing direct to consumers dated 3.26.2020 and as revised.
- F. Beyond the State requirements and guidelines for farmers’ markets referenced in Section 4.E above, the LICENSEE agrees to immediately comply with any additional social distancing and/or other public health and safety requirements that the Town, in its sole discretion, may impose on the market if deemed necessary to protect public health and safety.

4. **Term.**

This Agreement shall be effective from the date of execution through December 30, 2020 with the option for an annual renewal, unless this **LICENSE** is sooner terminated by either **LICENSEE** or **TOWN**, as provided herein.

5. **Repairs and Maintenance of PREMISES**

LICENSEE represents that it has inspected and examined the **PREMISES** and accepts them in their present condition and agrees that **TOWN** shall not be required to make any improvements whatsoever in or upon the **PREMISES** or any part thereof. **LICENSEE** agrees to keep said **PREMISES** safe and in good order and condition at all times during the term hereof, and upon expiration of this License or any sooner termination thereof, **LICENSEE** will quit and surrender the possession of the **PREMISES** quietly and peaceably and in as good order and condition as they were at the commencement hereof, reasonable wear, tear, damage by the elements, and damage by third parties other than **LICENSEE** and Vendors, excepted; **LICENSEE** further agrees to leave the **PREMISES** free from all nuisance and dangerous or defective conditions not in existence at the commencement of this License and attributable to **LICENSEE**’s operations.

6. **Assignment.**

This License may not be assigned without the prior written consent of the Town Manager, provided that this limitation on assignment shall not limit the authority of **LICENSEE** to permit duly authorized Vendors to use stalls within the market with authority of **LICENSEE** as permitted by this Agreement.

7. **Management of Association.**

Management of the Association shall be pursuant to Bylaws and Rules and Regulations which are not inconsistent with the **TOWN** ordinance. Any changes to the **LICENSEE**'s Bylaws and/or Rules and Regulations and/or additions to the list of products to be sold under Section 3, shall be reviewed and approved by the Town Manager. The approval of such changes by the Falmouth Town Council shall not be required provided the changes are not inconsistent with the **TOWN** ordinance. The current Associations Bylaws and Rules are attached hereto as Exhibit 3.

8. **Applicable Licenses.**

Vendors shall possess any required state licenses and are part of this Agreement as attached hereto as Exhibit 4. Day table vendors shall submit any applicable licenses to the **TOWN** prior to participating in the market.

9. **Insurance for Use of PREMISES.**

- A. Each Vendor to obtain a certificate of insurance demonstrating that Vendor has in effect a policy of general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage naming the Town as an additional insured thereon, as evidenced by the submission of a certificate of insurance.
- B. **LICENSEE** shall obtain comprehensive general liability insurance in the minimum amount of One Million Dollars (\$1,000,000) combined single limit covering bodily injury, death or property damage by naming the **TOWN** as additional insured thereon, as evidenced by the submission of a certificate of insurance.

10. **Indemnification.**

LICENSEE shall defend, indemnify and hold harmless the **TOWN** and **TOWN**'s officers, elected officials, and employees, from and against any and all claims, demands, suits, expenses (including reasonable attorney's fees) and judgments by or on behalf of any person or entity, arising out of **LICENSEE**'S use or occupancy of **PREMISES** under this License. Without limiting the generality of this Article, **LICENSEE** expressly agrees to defend, indemnify and hold harmless the **TOWN** from and against the following:

- A. Employee Claims. Claims of **LICENSEE**'S employees or their estates for workplace-related injuries or death sustained on the **PREMISES** during the course of

such employees' employment, including a waiver of subrogation for claims of such workers' compensation insurance carriers pursuant to 39-A M.R.S §107, as amended.

- B. Other Claims. Claims of any person, entity or estate for personal injury, property damage, or death occurring on or from the **PREMISES** and arising out of the business operations on the **PREMISES of LICENSEE**, and its officers and employees.
- C. **LICENSEE's** indemnification obligations under this paragraph 12 shall be limited to the scope and limits of the insurance coverage provided by **LICENSEE** under paragraph 11.B.

This Section and Section 9 shall survive termination of this License and all insurance hereunder shall be primary to any insurance or self-insurance of **TOWN**.

11. Revocable License.

This License may be revoked by the **TOWN** at any time after providing **LICENSEE** with at least ~~forty five (45)~~ thirty (30) days prior written notice, and a statement of reasons for revocation, ~~and an opportunity for hearing.~~

12. Default; Suspension.

In the event that **LICENSEE** shall be in found in default of any of the terms or conditions herein agreed to be kept and performed by **LICENSEE**, the **TOWN** may terminate and end this License immediately, and thereafter **TOWN** may enter upon said **PREMISES** and remove all persons and property thereon under the authority of this License. In the event of a suspected default, the Town Manager shall have the authority to immediately suspend operation of the market pending Council action within 30 days to determine whether the License should be terminated. Upon a decision to temporarily suspend market activities, the Town Manager shall promptly provide notice of default to the LICENSEE and may provide an opportunity to cure such default prior to action by the Council. **LICENSEE** shall be liable to **TOWN** for all costs incurred by it as a result of the **LICENSEE's** uncured default and **LICENSEE** shall pay all costs of collection incurred by **TOWN**, including reasonable attorney's fees.

13. Hold Over.

In the event that **LICENSEE** shall hold over and remain in possession of the **PREMISES** with the consent of the **TOWN**, such holding over shall be deemed to be from month to month only, and upon all the same terms and conditions as contained herein.

14. Notices.

Any notices which are required hereunder, or which either **LICENSEE** or **TOWN** may desire to serve upon the other shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage pre-paid,

return receipt requested, addressed to Cumberland Farmers' Market Association with a mailing address of c/o Vicki Marion, President, 29 Linnell Road, Windham, ME or addressed to Town of Falmouth, Town Manager, 271 Falmouth Road, Falmouth, ME 04105.

15. Waiver.

Waiver by either party of any default in performance by the other of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

16. Compliance with Laws.

Each party agrees to comply with all laws, ordinances, rules and regulations which may pertain or apply to the **PREMISES** and the use thereof, including without limitation all laws regarding non-discrimination and equal employment opportunity.

17. Successors and Interest.

All of the terms, covenants and conditions contained herein shall continue, and bind all successors in interest of **LICENSEE** and **TOWN** respectively, herein.

IN WITNESS WHEREOF, the said **TOWN OF FALMOUTH** has caused this License Agreement to be signed in its corporate name and sealed with its corporate seal by Nathan A. Poore, its Town Manager, thereunto duly authorized, and **CUMBERLAND FARMERS' MARKET ASSOCIATION** has caused this License to be signed by Ron DiGravio its President as of the day and date first set forth above.

WITNESS:

TOWN OF FALMOUTH

By: _____
Nathan A. Poore
Its Town Manager

**CUMBERLAND FARMERS'
MARKET ASSOCIATION**

Print Name: Vicki Marion

Its: Treasurer