

AGREEMENT

THIS AGREEMENT made this day of May 2017.

BETWEEN:

THE CORPORATION OF THE TOWN OF KINGSVILLE

(the “Town”)

- and -

COMMUNITY FARMERS’ MARKET

(the “Organizer”)

WHEREAS the Organizer has applied for the right to use a certain portion of property owned by the Town for the purposes of operation of a food market at which local farmers sell fruit and vegetables, meat, cheese, and bakery products directly to consumers (the “Farmers’ Market”) and the Town has agreed to grant the Organizer such right on the terms and conditions contained in this Agreement.

NOW THEREFORE this Agreement witnesseth that in consideration of the use of the said portion of the right of way and the obligations herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Town and Organizer hereby agree as follows:

Recitals

1. The recitals as set out above are true in substance and in fact and all terms referenced therein are incorporated into and form part of this Agreement.

Term

2. This Agreement shall extend for a period of five (5) years commencing the 2017 season through to and including the 2021 season, and grants the Organizer a licence to use property as described in Schedule “A” to operate a Farmers’ Market during the dates and times more particularly described in provision 3, below.

Grant

3. The Town hereby grants to the Organizer a licence to use that portion of the grassy area or “parkette” located immediately to the south of the property municipally known as 28 Division Street South, Kingsville, Ontario as more particularly depicted in Schedule “A” (the “Subject Property”) attached hereto and forming part of this Agreement for the purposes of operating the Farmers’ Market

and for no other purpose on the following days and between the following times for 2017:

Days: Each and every Saturday commencing on the 20th day of May 2017 to and including the 7th day of October 2017

Time: 7:00 a.m. to 3:00 p.m.

And for 2018 to 2021 inclusive:

Days: Each and every Saturday commencing no earlier than the 2nd Saturday of May to and including the 2nd Saturday in October.

Time: 7:00 a.m. to 3:00 p.m.

Covenants of the Organizer

4. The Organizer covenants and agrees with the Town as follows:

- a) The Organizer shall abide by all by-laws, laws, regulations, orders and ordinances of any federal, provincial and municipal authorities and public bodies having jurisdiction and shall indemnify the Town against any and all damages, charges, actions or costs resulting from any non-compliance. Without limiting the generality of the foregoing, the Organizer shall:
 - i) meet or exceed the requirements of the Windsor Essex County Health Unit for the handling of food;
 - ii) comply with the Town's Alcohol Risk Management Policy, as may be amended from time to time;
 - iii) remove from the Subject Property all products used in the preparation of food such as charcoal, oil and grease, in properly sealed containers, without depositing the materials on the ground or in the trash receptacles provided by the Town;
 - iv) ensure that there are no open fires nor cooking beneath any tent; and
 - v) not do or permit anything to be done on, around or in relation the Subject Property, or bring or keep anything thereon which may in any way increase or cause environmental contamination, adverse environmental effects, or which may be in contravention with *The Environmental Protection Act*, R.S.O. 1990, c.E. 19 as amended, or any other federal, provincial or municipal legislation, regulation ordinances or rules regarding environmental protection. The Organizer shall be solely and entirely responsible for the clean-up and repair of any environmental damage, or adverse effects arising as a result of the breach of the covenants herein contained.

- b) The use of the Subject Property and/or the operating of the Farmers' Market shall:
- i) not interfere with the entrance to any building; pedestrian crossing areas or designated accessible parking or passenger pick-up and drop-off areas; nor with commercial loading zones; and
 - ii) in no way obstruct vehicular or pedestrian traffic and the adjacent sidewalk shall not be encumbered by queuing of the Organizer's patrons, or advertising objects, or by anything else which may impede pedestrian passage or the passage of wheelchairs and permitted motorized devices and for greater certainty.
- c) The Organizer shall have the right to use the parking lot adjacent to the Subject Property municipally known as 11 Pearl Street West, Kingsville, Ontario for the delivery and pick up of chattels, equipment and goods to the Subject Property only between the following hours:

7:00 a.m. to 8:30 a.m.
2:00 p.m. to 3:00 p.m.

Notwithstanding the foregoing, such right to use shall not extend to any parking area designated for the exclusive use of the Business Improvement Area Board of Management and/or visitors to the Carnegie Arts and Visitor Centre.

- d) Subject to subsection 4(c), vehicles belonging to customers of the Farmers' Market or the public in general shall have use of the parking lot adjacent to the Subject Property municipally known as 11 Pearl Street West, Kingsville, Ontario for the purpose of vehicular parking only. Delivery vehicles and other vehicles otherwise associated with the Organizer shall be parked in the parking lot located at 21 Mill Street West, Kingsville, Ontario.
- e) The Organizer shall have the right to use the two hydro outlets located on the south side of the exterior of the building located at 28 Division Road South.
- f) The Organizer shall not do, suffer or permit to be done any act or thing upon or above the Subject Property which is or would constitute a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the Subject Property or to the public generally.
- g) The Organizer shall not make any improvements or alterations to the Subject Property without the prior written consent of the Town, which consent may be arbitrarily or unreasonably withheld. Any improvements or alterations made by the Organizer in accordance with this Agreement shall be at the sole risk, cost and expense of the Organizer and shall be made to the sole satisfaction of the Town.
- h) Unless consent in writing has been provided by the Town to the Organizers,

the Organizer shall not place in, on or attach anything to trees, utility poles, light standards, receptacles, furniture or property owned by either the Town or the Kingsville Business Improvement Area Board of Management. Notwithstanding the foregoing, the Organizers may on those days that the Farmers' Market is held, place one sandwich board sign advertising the Farmers' Market on the sidewalk adjacent to the locations municipally known as:

1 Main Street West, Kingsville
2 Main Street East, Kingsville

which sign shall not have a height greater than 3 feet or a width greater than 2.5 feet.

- i) The Organizer shall, at its own expense:
 - i) return the Subject Property to the Town in the same condition as it was received by the Organizer, including, but not limited to replacing any trees, plantings and/or turf damaged by the Organizer in relation to the use of the Subject Property or the operating of the Farmers' Market;
 - ii) have an effective on-site recycling plan for the Farmers' Market;
 - iii) provide adequate washroom facilities to service the anticipated number of participants and attendees;
 - iv) ensure that all fire hydrants remain unobstructed at all times;
 - v) keep the Subject Property clean and keep the adjacent property clear of refuse and debris;
 - vi) provide and maintain any chattels and equipment, including but not limited to furnishings, umbrellas and tents for the purposes of the operating of the Farmers' Market;
 - vii) ensure that any chattels and equipment brought onto the Subject Property are sufficiently maintained, affixed, or weighted to prevent their being lifted or carried by wind and shall not overhang outside of the Subject Property or obstruct visibility on the adjacent sidewalk or property;
 - viii) remove all chattels, equipment, and goods, debris, refuse and recycling from the Subject Property at the end of each day;
 - ix) ensure that there are adequate persons in place to maintain and manage the Farmers' Market, including, but not limited to the following:
 - i. to maintain the Subject Property and monitor the pick-up of all refuse and recycling materials;

- ii. to manage stands, concessions, and other saleable item tables or stands; and
 - iii. to manage and coordinate deliveries, parking, and parking lot(s) where applicable.
 - j) The Town shall be entitled to inspect the Subject Property at any time to ensure compliance with this Agreement.
5. Notwithstanding any specific reference made herein, in the event that the Organizer fails to do anything required of it under this Agreement, the Town has the right to perform such activity and the Organizer shall be responsible to the Town for the cost of the performance.

Indemnity Deposit

6. Upon the execution of this Agreement, the Organizer shall provide an indemnity deposit to the Town in an amount of one thousand dollars (\$1,000.00) in the form of a cheque which cheque shall be retained by the Town without interest, and cashed only to meet all or a portion of the cost and expenses of performing any activity that the Organizer has failed to perform and/or remediating or repairing any damage to the Town Property caused as a result of the execution of this Agreement or any action taken or things done or maintained by virtue hereof; or the exercise in any manner of rights arising hereunder.
7. Following the expiry of the rights granted under this Agreement, and, upon request of the Town, the indemnity deposit, less any costs and expenses of performing any activity that the Organizer has failed to perform and/or remediating or repairing any damage to the Town Property shall be refunded by the Town, however, if the costs or performance, remediation or repair exceed the amount of the indemnity deposit, the Organizer shall be responsible to pay the deficiency to the Town.

Release, Indemnity and Insurance

8. The Organizer hereby releases and holds harmless the Town its directors, officers, employees, agents and appointed officials, of and from all actions, causes of action, suits, claims and demands of every nature and kind arising out of the execution of this Agreement or any action taken or things done or maintained by virtue of this Agreement or the exercise in any manner of rights arising hereunder.
9. The Organizer shall at all times indemnify and save harmless the Town its directors, officers, employees, agents and appointed officials from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted in any manner based upon, occasioned by or attributable to the execution of this Agreement or any action taken or things done or maintained by virtue hereof; or the exercise in any manner of rights arising hereunder.

10. The Organizer shall obtain and keep in force Commercial General Liability Insurance underwritten by an insurer licensed to conduct business in the province of Ontario and including the following:
- a) a limit of liability in the amount of \$5 million per occurrence;
 - b) the Town named as an additional insured;
 - c) a provision for cross liability in respect of the named insured;
 - d) non-owned automobile coverage with a limit of \$5 million per occurrence;
 - e) products and completed operation coverage (broad form) with a limit of \$5 million per occurrence;

and provide a copy of a Certificate of Insurance to the Town upon request.

Termination

11. If the Organizer is in breach of any of the terms of this Agreement, the Town may, at its option, immediately terminate this Agreement.
12. If the Town exercises its right to terminate this Agreement, the Town shall not be liable in any way to compensate the Organizer for any loss, costs, or damages which may be suffered by the Organizer or by any person claiming under the Organizer by reason of such termination.

Notice

13. Any notice required to be given under this Agreement shall be in writing and provided by way of:
- a) hand delivery, in which case notice shall be effective on the date of delivery;
 - b) electronic mail, in which case notice shall be effective on the day on which the electronic mail is received; or
 - c) regular letter mail, in which case notice shall be effective on the fifth day following the date of mailing,

to the Town at: 2021 Division Road North
Kingsville, Ontario
N9Y 2Y9

Email Address: jastrologo@kingsville.ca

to the Organizer at: c/o Cherrin Meleg
614 Malo Street
Kingsville, ON
N9Y 3G6

Email Address: cherrinmeleg1@gmail.com

General

14. The Organizer shall not assign this Agreement or the use of the Subject Property without the written consent of the Town, which consent may be arbitrarily withheld in the sole and unfettered discretion of the Town.
15. This Agreement may not be amended or modified except by a written instrument executed by all parties.
16. Unless the context otherwise requires, words importing the singular in number only shall include the plural and *vice versa*, words importing the use of gender shall include the masculine, feminine and neuter genders, and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities.
17. If any portion of this Agreement shall be held to be invalid or unenforceable by a court or forum of competent jurisdiction, the remaining portions of this Agreement shall remain in effect and enforceable.
18. Waiver by any party of any violation or breach of this Agreement in any instance shall not be taken or held to be a waiver of any subsequent violation or breach or as a waiver of the provision itself that is breached, nor shall any delay or omission on the part of any party to exercise any right arising from such violation or breach alter or impair that party's right as to the same or any future violation or breach. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by the party which expressly waives a right, power or condition under this Agreement.
19. This Agreement shall be binding upon and ensure to the benefit of the parties to it, and their respective heirs, personal representatives, successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above-written, as attested by the hand of its duly authorized officers in that behalf.

**THE CORPORATION OF THE
TOWN OF KINGSVILLE**

Per: _____
Nelson Santos, Mayor

Per: _____
Jennifer Astrologo, Clerk

COMMUNITY FARMERS' MARKET

Per: _____
Cherrin Meleg

Per: _____
Claudio Adragna

We have the authority to bind the Organization