

TERMS OF USE AGREEMENT by and between CITY OF ELGIN and THE ELGIN FARMERS' MARKET

By execution of this City of Elgin Terms of Use (the "Terms of Use") by the undersigned authorized agent of the Elgin Farmers' Market, (the "Licensee"), in consideration for Licensee being allowed to use Veterans' Memorial Park (the "Park") and the Depot Museum Parking lot owned by the City of Elgin, Texas (the "City"), Licensee agrees that the following terms, conditions and obligations apply to such use:

A. EVENT

The proposed event is a Farmers' Market (the "Event").

B. CITY'S PARTICIPATION

The City and Licensee agree to participate in the Event, as follows:

1. The City will permit Licensee to use and occupy Veterans' Memorial Park and gazebo on Thursdays from 2pm to 9pm such times to include market set up break down and operation. Holidays – the Elgin Farmers Market may request an alternate date if a Holiday falls on Thursday.
2. The City will allow usage and access to the portable toilets on Depot Street and water faucets located in Veterans Memorial Park during the regular hours of the Event.
3. Parking for the Event will be the currently available public parking at the Chamber of Commerce and Depot Museum parking lots.
4. The City of Elgin may close streets for events or emergencies, or city business regardless of this agreement and will whenever possible provide three days notice to the Elgin Farmers' Market and waive the lease fee for that event.
5. The City of Elgin at its discretion may use the sites for city sponsored events or private rentals and will notify the Elgin Farmers' Market seven days in advance and waive the lease fee for that event.
6. In case of inclement weather the market may be moved to the museum parking lot at the City's Discretion.
7. The City may modify, maintain or improve the park including temporary holiday displays at its discretion.
8. The City will provide barricades for the Elgin Farmers Market to use to

secure the museum lot parking spaces. Elgin Farmers Market may place barricades after 9pm on Wednesdays and remove them after market operations on Thursday. Barricades will be stored at the Depot Museum.

C. LICENSEE'S OBLIGATIONS AND CONDITIONS PRECEDENT TO CITY'S PARTICIPATION

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In consideration of the City's participation in the Event, the city requires the following assurances that the Site will be properly utilized by the Licensee for the benefit of the citizens of the Elgin community and surrounding area:

1. Licensee shall be responsible for maintaining the Site and facilities in a manner that is clean, neat and orderly.
2. Licensee shall limit participation at the Site to vendors that meet all state and local laws, regulations, and ordinances, and shall be responsible for removing any vendors from the area that fail to comply with the requirements noted herein for maintenance and upkeep of the facility. All food vendors cooking on site will be required to visibly post a Bastrop County Food Permit or Bastrop County Temporary Food Permit. No manufactured merchandise, resale or flea market vendors.
3. Licensee shall provide the City a copy of Premises Liability Insurance Policy naming the City as an additional insured and indemnifying the City of any liability with regard to the events and its vendors at the Site.
4. Licensee shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Licensee, or Licensee's agents, employees or subcontractors, Vendors or any participant or attendee of the Event arising from, associated with, or otherwise relating to the Event, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Licensee (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim. Maintenance of the insurance required under these Terms of Use shall not limit Licensee's obligations under this paragraph.

5. Licensee shall be responsible for all management of the activities at the project site and coordination with the City of Elgin. Organizer shall have a staff member present at the market during all hours of operation. Contact information for this individual will be provided to City staff.

6. Licensee shall provide the City a quarterly report of the activities of the Event, including particularly a report . That includes the following: weekly number of vendors, weekly number of customers (estimated), entertainment or programming provided at the market, and marketing efforts.

7. Licensee shall have an average of seven (7) vendors operating in individual booth spaces weekly. Licensee shall ensure that no stakes are driven into the turf or pavement areas at either location.

8. Licensee shall pay \$75 weekly for Veterans Memorial Park rental, and \$25 weekly for Depot Museum parking lot rental (reflects the nonprofit rate, Veterans Memorial Park rental fee with gazebo is \$300 daily, Public parking lot rental fee is \$100 daily). Fees to be paid Monthly, by 25th of month for the following month. Late fee of \$25 if rental fees are not paid by the 30th.

9. Licensee shall ensure that food vendors do not dispose of coals or oil on Park property or in park trash cans.

10. Licensee may display a banners or signs for the Event three hours before each Event. Signage may be placed on the gazebo – no staples or nails may be used to secure signage. Banners or signs shall be removed at the end of each Event. Two a-frame signs may be placed at the street corners throughout the year, must be kept secure and in good condition.

11. Licensee will provide First Aid resources on site with a minimum of a first aid kit and communication equipment .

D. FEES

1. Licensee shall pay fees monthly as set in Section C.8 to the City for Site Access. Licensee shall remove all Event waste at the end of each event. City may determine if staff support is required for the event and pass on the associated fees to the Licensee. City will provide five days notice to the Elgin Farmers' Market about these associated fees.

2. The City may request that the Event organizer provide port o lets for the market, if the City determines that the existing public facilities are inadequate for the event. Associated costs will be passed on to the Licensee. This determination will be based on use and City will provide ten days notice to the Elgin Farmers' Market about these associated costs.

3. If City of Elgin determines that a police officer is needed to ensure pedestrian safety and or traffic control related to the Event, an officer based on availability may be obtained through Elgin Police Department for \$65 Dollars per hour, (or the fee stated in the annual fee schedule whichever is higher) or through another law enforcement agency if City of Elgin officers are not available. Licensee is responsible for such fees related to service.

E. OTHER

1. All parties agree that no verbal modification or amendment of this Letter of Agreement shall be allowed and, if made, shall not be binding on any of the parties. The parties agree and acknowledge that circumstances may arise that require further discussion and possible modification to this preliminary agreement.

2. The City of Elgin reserves the right to permit other uses of the facility and grounds and will provide seven days advance notice to the Elgin Farmers' Market .

Licensee shall comply with all city ordinances, regulations and state laws including the noise ordinance.

3. In the case of any breach to this agreement by Licensee, all property, the facility and all facility rights revert immediately back to the City and Licensee shall have no further rights to enter onto or use the Site regarding this event. In that event, Licensee shall have no claim for damages or any causes of action against the City related to this Agreement.

F. TERM/TERMINATION

1. The term of this Agreement shall be for one year beginning on the date this Agreement is signed, unless otherwise terminated by either Party in writing.

2. Upon sixty (60) days written notice, the City may terminate this Agreement, with or without cause, and without the consent of the Licensee. Likewise, upon sixty (60) days written notice, the Licensee may terminate this Agreement, with or without cause, and without the consent of the City.

G. CONTACT

The contact for the Licensee shall be:

Name: Austin Moline
Cell: 512-281-6093
Email: austinmoline0@gmail.com
Mailing Address: 4451 County Road 467
Elgin, TX 7621

The contact for the City shall be:

Name: Amy Miller, Director Community Services
Office: 512-229-3213 or 512-801-5748
Email: amiller@ci.elgin.tx.us
Mailing Address: _
City of Elgin
Attn: Director Community Services
PO Box 591
Elgin Texas 78621 __

IN WITNESS WHEREOF, City and Licensee execute these Terms of Use and agree to be bound by them regarding Licensee's use of the Premises.

CITY OF ELGIN

Date: _____

Mayor

ATTEST:

Date: _____

City Secretary

AGREED:

ELGIN FARMERS' MARKET

By: Austin Moline
President, Elgin Farmers' Market

Date: _____