

**LICENSE AGREEMENT**  
**TO OPERATE A FARMERS' MARKET**

**THIS AGREEMENT** is made effective this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **FARM TO CITY, LLC**, and ("Licensee") whose address is 2410 Walnut Street, Suite 102, Philadelphia PA 19103 and **TOWNSHIP OF LOWER MERION** ("Township"), 75 E. Lancaster Avenue, Ardmore, PA 19003.

**1. Background.**

(a) Licensee recruits the following categories as participants of an outdoor farmers' market (collectively herein "Producers"):

- i. farmers and growers
- ii. specialized producers of value-added food products

Licensee operates outdoor farmers' markets limited to such Producers in various communities according to a set of rules controlling all aspects of market operations including products sold, vendor mix, public safety, sanitation, market aesthetics, municipal permits and taxes, and insurance.

(b) The Township is authorized by the First Class Township Code (53 P.S. §56524) to establish, maintain and regulate markets and market places on public grounds and to contract with any person, firm, or corporation for the erection, maintenance, and regulation of market houses and market places. The Township, through the Economic and Community Development Division of the Building and Planning Department, wishes to exercise these powers for the benefit and enjoyment of the general public and is entering into this license agreement in furtherance thereof.

(c) Licensee seeks to continue a Farmers' Market Program in Lower Merion Township, to administer and oversee the operation of the Farmers' Market during calendar year 2020. The market operations of Farm to City will be coordinated with a volunteer committee of Township residents. .

(d) The proposed location for the Farmers' Market is a portion of Municipal Lot #7. This property is subject to a deed restriction limiting its use to the parking of automobiles and prohibiting its use for private gain or profit without the consent of the National Railroad Passenger Corporation ("Amtrak"). The parties agree that Amtrak's consent is a condition precedent to the enforceability of this license agreement by either party. This deed restriction may limit the types of vendors that could be permitted under this agreement.

**2. Obligations of the Parties.**

(a) Licensee will make application to the Township for a permit to establish a Farmers' Market limited to Producers as defined above, to be held in a portion of Municipal Lot #7 at the corner of North Bryn Mawr Avenue and Lancaster Avenue, Bryn Mawr. The proposed market will be open only on Saturdays from approximately 9am to 1pm, with additional time to allow setup prior to opening as

well as clean up and tear down after each weekly event. The Licensee will strive to operate the Saturday market operations throughout the year. However, it is anticipated that during the periods of January through March, 2020 the market operations may be conducted on a less than weekly basis. The determination will be made by the Licensee and communicated to the Township.

(b) Licensee will seek out and contractually arrange with local farmers and other Producers to participate in the market. It will make every effort to recruit at least six Producers, including at least one or two vegetable growers and a fruit grower. It will work with the Township to determine any community interest in specialized producers, such as a flower grower, bread maker or a cheese maker. Although Licensee will do its best to recruit Producers it cannot guarantee that it will secure commitments from them, or that, once recruited, all Producers will participate each Saturday. All products displayed at the market must be produced by the vendor who sells them or by a neighbor. For the purpose of this agreement, a Producer is considered to be a farmer, grower, baker, maker of homemade foods, arranger of dried or grown flowers produced by that maker, or otherwise enhance the value of a food product that is refined locally. Vendors must be full or part-time Producers of accepted products that are offered for sale at the market. It is understood that the Producers that participate do so to support their primary source of farming or production, and otherwise should not operate a retail storefront, provide substantial product line(s) for another purveyor or retailer, or serve as a third-party intermediary in order to sell merchandise not directly affiliated with their primary farm or production.

(c) Farm to City can work with the Township and the volunteer committee to recruit qualified individuals from the community for on-site management of market operations on a weekly basis. Farm to City staff will train the on-site managers, oversee opening day operations, check on the market periodically, and be available for additional consultation.

(d) Licensee will establish rules requiring each Producer to provide a trash container and a broom. Each Producer will be responsible for cleaning the market site at the end of the market day; Producers must remove all refuse they generate at the market. Farm to City staff or the market manager(s) from the community will monitor and enforce sanitation rules.

(e) Licensee will apply for any necessary permits required by the Township or the Montgomery County Health Department to use the market space and operate the market. All scales will be certified by Montgomery County Department of Weights and Measures.

(f) Township's sole responsibility will be to provide the physical space required to operate the Market. It is anticipated that this will require reserving up to 50 parking spaces for the Market operations. Licensee will work with the Township to determine the procedure for posting the market site and may be responsible for controlling the market area to prevent non-producer vehicles from entering the market area while the market is being set up, operating, and closing.

(g) Licensee will manage the market and enforce the Market Rules which have been developed by Licensee and are attached hereto as Exhibit "A." Any material changes to the rules and procedures set forth in Exhibit "A" are subject to the prior written approval of Township.

(h) Licensee will be responsible for all signage and traffic controls necessary for Market operations and will adhere to the directions of the Lower Merion Police Department with respect to traffic controls. The Licensee recognizes that neither the Township nor Amtrak has any obligation to the Licensee with respect to parking lot conditions in case of inclement weather.

(i) The Licensee may post a banner sign, not to exceed 25 square feet, on the fence fronting Lancaster Avenue. The banner shall be maintained by the Licensee, and the Township shall have the right to order the removal of the banner if it is not properly maintained. This banner may be posted April, 2020 through December, 2020. During the periods when the market operations may be conducted on a less than weekly basis, the banner sign may be posted one week prior to operation, and then removed after the weekly operation has closed.

### **3. Term of Agreement.**

This Agreement shall commence upon its execution by the parties and shall remain effective until the end of the 2020 calendar year.

### **4. Payment Terms/taxes.**

(a) The Licensee will pay the Township a fee of \$3 per day for each parking space dedicated for use by the Producers during the market operation. The Licensee will confirm the total number of spaces needed for the market season prior to the opening of the first market day. Any changes to the number of maximum parking spaces needed should not be done without prior written approval from the Township.

(b) The Licensee acknowledges that it is an entity doing business in the Township and as such is required to secure a Mercantile License before the first market day.

(c) The Licensee will file a Mercantile License and business tax return and pay that tax based on the daily fees collected from the Producers in order to attend and sell their products at the market.

### **5. Independent Contractor Status/Volunteers.**

(a) The parties acknowledge and agree that Licensee is an independent contractor. Nothing in this Agreement shall be regarded as creating any relationship, whether as employer-employee, joint employer, as a joint-venture, partner or shareholder between the parties, other than as set forth herein as an independent contractor performing certain services. Neither this Agreement nor the services rendered hereunder shall result in Licensee being deemed an

"employer" or similar party responsible for decisions affecting employees of Township under any federal, state or local law or regulation.

(b) Any personnel providing assistance at the event, other than Township employees, will be considered volunteers of the Licensee or Producers, not the Township or Amtrak.

(c) Licensee may elect to hire an assistant to the Licensee. Any such person shall be approved by the Township prior to his/her engagement. Licensee assumes all responsibility for compensating such person.

## **6. Compliance with Laws.**

Licensee shall make its best effort to assure that all Producers comply with federal, state, county and local laws and regulations regarding the sale of food products.

## **7. Indemnification.**

To the fullest extent permitted by law, Licensee will defend, indemnify and hold Lower Merion Township, Amtrak, its/their officers, elected and appointed officials, agents, representatives and employees harmless from any and all claims, damages, costs, including attorney's fees, and liabilities of any kind arising out of the performance of Licensee's obligations under this Agreement and in conjunction with market operations; except to the extent such claims, damages, costs and liabilities result from the gross negligence or willful misconduct of the Township or Amtrak, its/their employees, representatives or agents. In no event shall Licensee be liable for lost profits. This obligation of Licensee to defend, indemnify and hold harmless Lower Merion Township, Amtrak, its/their officers, elected and appointed officials, agents, representatives and employees shall survive termination of this Agreement.

## **8. Insurance.**

Licensee and each and every Producer recruited by Licensee pursuant to this Agreement, at no cost to Township, shall procure, provide, and deliver to Township and Amtrak and thereafter maintain in effect during the term of this Agreement, commercial general liability or farm liability insurance covering:

- (a) Liability arising from premises and operations;
- (b) Liability arising from the actions of independent contractors;
- (c) Liability arising from products and completed operations; and
- (d) Contractual liability (including protection for the Licensee from bodily injury and property damage claims arising out of liability assumed under this Agreement).

Lower Merion Township, Amtrak, and its/their officers, elected and appointed officials, agents, representatives and employees are to be named as additional insureds on such commercial general liability or farm liability insurance with

respect to liability arising out of the farmers' market operations addressed in this Agreement. (***Special Note for Insurance Representative:*** Such commercial general liability insurance required herein shall be endorsed with ISO form CG 2026 entitled "Additional Insured – Designated Person or Organization". Furthermore, the schedule on the additional insured endorsement must properly reference Lower Merion Township and its elected and appointed officials, agents, representatives and employees.)

Such commercial general liability or farm liability insurance for bodily injury, personal and advertising injury and property damage including loss of use, shall be written for not less than the limits specified below or required by law, whichever is greater:

\$	1,000,000	each occurrence;
\$	1,000,000	personal and advertising injury;
\$	2,000,000	general aggregate; and
\$	2,000,000	products/completed operations aggregate.

If Licensee **or Operator** has any employees, that party, pursuant to this Agreement, at no cost to Township, shall procure and thereafter maintain in effect during the term of this Agreement workers compensation insurance with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance with minimum limits of:

\$100,000	each accident for bodily injury by accident;
\$100,000	each employee for bodily injury by disease; and
\$500,000	policy limit for bodily injury by disease.

All required insurance coverages must be underwritten by insurers allowed to do business in the Commonwealth of Pennsylvania and acceptable to the Township. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless Township grants specific approval for an exception. The Township hereby grants specific approval for the acquisition of workers compensation and employers liability insurance from the State Workers' Insurance Fund (SWIF) of Pennsylvania.

Said insurance shall be endorsed to provide that Township and Amtrak will be notified in writing by the insurer(s) at least thirty (30) days in advance of any cancellation or non-renewal. The providing of such insurance shall not be deemed a limitation on the liability of Licensee as provided in this Agreement, but shall be additional security therefore.

To the fullest extent permitted by law, the Licensee and each Producer and their employees, officers, volunteers, agents and representatives waive any right of recovery against Lower Merion Township, Amtrak, and its/their officers, elected and appointed officials, agents, representatives and employees for any and all claims, liability, loss, damage, costs or expense (including attorneys' fees) arising out of the the farmers' market operations addressed in this Agreement. The

Licensee and each Producer shall advise their insurers of the foregoing and such waiver shall be provided under Licensee's and Producers' property and liability insurance policies. Further, the Township shall not be responsible for any loss or damage to property of Licensee or their vendors, invitees, employees, officers, volunteers, agents and representatives while such property is on, at or adjacent to the premises of the Township.

Insurance provided to the Township and its elected and appointed officials, agents, representatives and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Township and its elected and appointed officials, agents, representatives and employees shall be excess of and non-contributory with insurance provided to the Township and its elected and appointed officials, agents, representatives and employees as specified herein.

Licensee's obligation is to inform Producers of these insurance requirements and to deny attendance at the market of any Producer who has not submitted to the Licensee the required proof of insurance.

## **9. Miscellaneous.**

(a) Entire Agreement. This Agreement contains the entire understanding of the parties. The Agreement may not be changed orally, but only by a writing signed by both parties. All prior negotiations, discussions and agreements by and between the parties hereto with respect to such matters agreed to herein which are not reflected or set forth in this Agreement shall have no further force or effect.

(b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions.

(c) Successors and Assigns. The rights and obligations of the parties hereto shall inure to the benefit of and shall be binding upon the successors and assigns of each of them; provided, however, that neither this Agreement nor any of the rights, interest or obligations hereunder shall be assigned by Licensee without the prior written consent of Municipality.

(d) Notices. Any notice required to be given under this Agreement shall be deemed given if it is in writing and sent either by regular mail, recognized overnight delivery service or by hand delivery, to the Township and/or Licensee, as the case may be:

If to Licensee :        Robert Pierson  
                                 Farm to City, LLC  
                                 2401 Walnut Street, Suite 102  
                                 Philadelphia, PA 19103

If to Township: Township of Lower Merion  
Ernie B. McNeely, Township Manager  
75 East Lancaster Avenue  
Ardmore, Pa. 19003

If to Amtrak: National Railroad Passenger Corporation  
Real Estate Development  
30th Street Station, 5th Floor SW  
Philadelphia, PA 19104

(e) Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

(f) No Third Party Beneficiary. Except as expressly provided for herein, nothing in this Agreement is intended to confer upon any person who is not a party hereto any rights or remedies of any nature whatsoever under or by reason of this Agreement.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date set forth above.

FARM TO CITY, LLC.

By: \_\_\_\_\_  
Robert Pierson, Member

ATTEST

\_\_\_\_\_

TOWNSHIP OF LOWER MERION

By: \_\_\_\_\_  
Ernie B. McNeely, Township Manager

ATTEST

\_\_\_\_\_  
Jody L. Kelley, Township Secretary