

LICENSE AGREEMENT
TO OPERATE A FARMERS' MARKET

THIS AGREEMENT is made effective this ____ day of _____, 2018, by and between **FARM TO CITY, LLC**, and ("Licensee") whose address is 1315 Walnut Street, Suite 1526, Philadelphia PA 19107 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 2019. The market operations of Farm to City will be coordinated with a volunteer committee of Township residents. The parties have agreed to the terms and conditions set forth herein.

(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, 2019 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 volunteers from the community for on-site management of market operations on a weekly basis. Farm to City staff will train volunteers, 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, 2019 through December, 2019. 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 2019 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
 1315 Walnut Street, Suite 1526
 Philadelphia, PA 19107

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

EXHIBIT “A”

(2019 Market Rules)



Farmers' Market Program Rules 2019 Season

Please read all market rules carefully and contact Farm to City if you have any questions. Violation of these market rules may result in reassignment of market position or loss of permission to sell in the market.

Registration:

- Only producers from the Region – defined as the area within 150 miles of Philadelphia – are permitted to sell at *Farm to City* markets.
- Producers must complete and submit to *Farm to City* an Application, and a Crop List if farmer or a Menu & Ingredient Chart if a food artisan. If accepted to one or more markets, producers must submit food safety forms and certificates of insurance.

Products:

- *Producer-only Rule*: Producers may only sell crops, other farm products, or kitchen or food related items that they grow, produce, or make themselves, unless exceptions are granted as described below.
- Value-added products may be sold, provided that value-added producers use ingredients obtained from farms in the Region, as defined above.
- Exceptions to the Producer-only Rule may be granted on a case-by-case basis if:
 - The product comes from in the Region, and no other producer grows and sells that product at the same market,
 - The producer requests and is granted an exception at least a week before the proposed product's start date,
 - The producer displays a sign clearly indicating who produced the product and where the exempted product was produced, and
 - The producer understands that he/she must stop selling the excepted product when a direct producer of that product enters the market.
- All producers selling processed foods must be licensed by a government agency and must provide license number and contact information of licensee to *Farm to City*. Producers selling only crops harvested but not further processed are exempt from this licensing requirement.

Attendance:

- Producers selling at *Farm to City* markets must attend each week between their start and end dates unless otherwise noted on their application or explained to the market manager at least a week in advance of the missed date. **Producers who do not attend market consistently may lose their position at that market.**
- Producers must notify the market manager at least an hour before market opening time if they cannot attend due to circumstances beyond their control. Otherwise they will be charged a market fee for that week.

Market Hours:

- Sales begin at the established opening time and not before.
- Producers must arrive early enough so they are set up, all products are priced, and staff is ready to sell at the opening time. They must stay until the closing time unless previous arrangements have been made. **Producers who are consistently late to market (2 times or more in a one month period) may lose their position at that market.**

Space:

- *Farm to City* assigns spaces at the market.
- Displays must not limit the view or access of customers to other stands.
- If space at market is limited, a space surcharge may apply if a producer requires space that is longer than one vehicle or parking space.

Parking:

- Where parking fees apply and *Farm to City* is unable to obtain a fee waiver, the producer is responsible for these fees.

Equipment:

- Producers are required to bring their own supplies and equipment, including a canopy or pop-up tent.
- Tents must have a white canopy, vertical legs (i.e. not splayed). FTC can waive the white canopy requirement for the first season for new producers who already own a non-compliant tent. (Also, see Policy on Securing Tents, under Public Safety.)
- Scales used at market must be licensed.

Signs:

- Producers must display a sign giving the name of the farm or business, nearest town, and state.
- Producers must have signs listing the price of every product offered for sale.
- All signs must be in place before sales begin.
- Products not produced by the Producer selling them must be clearly identified for the farm and farm location where they are produced.

Public Safety: Producer Responsibilities

- Producers must exercise caution in parking vehicles and unloading, reloading, and leaving.
- Producers must be sure that no objects belonging to them pose any danger to pedestrians, motorists, vehicles, or other property.
- Policy on Securing Tents
 - *Farm to City* requires all producers to secure each tent with weights or ropes immediately after the tent is set up to prevent accidents., Producers who do not come to market equipped with proper weights or ropes will not be allowed to set up any tent.
 - *Weights*: weights of at least 25 lbs must be secured to each single tent leg; two such weights must be attached to two adjacent tent legs.
 - Weights must be securely fastened to tent legs. Items loosely tied to tent legs or laid across the tent leg foot is not acceptable.

- *Ropes*: producers who choose to use ropes or straps to secure their tents must have the required weights on tent corners that are not secured by ropes or straps. Ropes and straps used to secure tents must be strong enough to withstand wind pressure without breaking.
- *High winds*: in the event of very high winds, *Farm to City* reserves the right to prohibit producers to set up tents or to require them to take down tents after they have been set up. We encourage producers to use their own discretion to operate without tents if they judge conditions to be too windy. In our experience, if the forecast calls for winds reaching speeds of 15 mph or higher, then we must consider working without tents.
- We strongly encourage each producer to speak with his or her insurance agent to find out if his or her current liability coverage is adequate to cover the liability of an accident involving a tent at market.
- In the event that any producer's tent is moved away from its original position or tipped over by the wind, and had not been secured as described above, that producer will be barred from any further participation in *Farm to City* markets.

Site Sanitation & Appearance:

- Each producer must have a trashcan and a broom at the market.
- Producers must keep their stand area clean and attractive: plain table coverings, boxes and other containers placed out of view, and stands kept free of product residuals and other litter.
- Producers must clean their stand and vehicle areas at the end of market and take all refuse with them.
- **Smoking** by any producer or their employees within sight of any market stand is prohibited.
- **Playing music** is only permitted during set-up before the market hours and during breakdown after the market hours. We reserve the right to ask producers to turn off the music if it is too loud or otherwise inappropriate.

Market Management:

- *Farm to City* is responsible for the operation, management, and administration of its farmers' markets. *Farm to City* employees are authorized to make operational and administrative decisions including application, interpretation, and enforcement of these rules.

Organic Certification:

- Any farm claiming that it offers certified organic products must submit a copy of its organic farm certification to *Farm to City* before its first day at market and thereafter when its certification is renewed.
- Organic and non-organic produce must be clearly separated and labeled accordingly if offered for sale by the same producer.

Inspections:

- *Farm to City* reserves the right to visit any farm or production facility with advance notice and to inspect the production of crops or products sold at its markets.

- In addition, we may request copies of all seed receipts for crops planted in 2019.

Sales Reports:

- All producers must submit monthly reports listing sales, by week and market. *Farm to City* provides sales report forms with monthly invoices, either electronically or by mail.

Market Fees:

- Starting market fee is \$35 per week per market for first-year producers and returning producers with average market day sales less than \$1,000 per day in the previous year.
- For producers with sales that average more than \$1,000 per market per day during the previous year, the market fee is 3.5% of that average market day sales, not to exceed \$80 per day.
- The Schedule for payment is as follows:
 - Seasonally - Payment must be received by June 30th. Season payments receive a 5% discount for the market days included in the payment.
 - Monthly – Payment must be received within 15 days of monthly invoice date. If payment is not received within 60 days, the full balance must be paid before attending the next market.
 - There is a \$5 late fee each month for market fees that are not paid on time. If we do not receive your payment within fifteen days of the date on market statements, we will add a \$5 late fee to your account.
 - Payment must be made by check and mailed to our office, or through PayPal. If using PayPal, use the “friends & family” option to avoid service fees. Payments will not be accepted at market sites.
- **Producers who owe market fees may lose their position at that market.**

Insurance Requirements:

- For your own protection and the protection of affected parties, *Farm to City* requires that your activities at farmers’ markets are covered by a general liability insurance policy for a minimum of \$2,000,000 annual claim aggregate and product liability insurance or equivalent for a minimum of \$2,000,000.
- *Farm to City* and any other entities specific to the market(s) you attend must be named as Additional Insured on Certificates of Insurance.
- We must receive the required insurance certificates from your insurance agent before your first market day. Producers whose certificates of insurance are not on file at the *Farm to City* office will not be allowed to start at market.

The following rules are specific to the municipalities where Farm to City markets are located:

City of Philadelphia

- Parking Violations. Producers are responsible for any parking violations received. If a producer receives a parking ticket within the time and space allowed by the applicable *Farm to City* street closure permit for the market, the producer must provide ticket details within two business days to *Farm to City* so that we can send a letter to the Philadelphia Parking Authority to *request* ticket rescission.

- **Farmers Market Producer License Requirements:**
 - *Farm to City* is the Philadelphia Farmers' Market Operator License holder. *Farm to City* submits to the Philadelphia Department of Public Health the list of participating producers, their business names, their contact information, their applicable food safety permits and licenses, and the license numbers and contact information for processing and butchering facilities where their value-added foods are prepared.
 - Producers who prepare food or who sell ready-to-eat/drink food on-site must have either a Permanent Special Event Permit or Mobile Vending License from the Office of Food Protection. For more information, call 215-685-7495 or visit: <https://business.phila.gov/media/SpecialEvents.pdf>.
 - The following types of producers are exempt from Office of Food Safety licenses: producers who sell whole, uncut fruits and vegetables, and other agricultural products; producers who sell potentially hazardous foods; producers who sell pre-packaged prepared foods that are not served ready-to-eat/drink. The Health Department honors the processed food licenses of these producers issued by itself or other jurisdictions via Farm to City's submission (see first bullet above)

Lower Merion Township (for the Bryn Mawr Market)

- **Parking Fees:**
 - Per an agreement between *Farm to City* and the Township of Lower Merion, in addition to the Market Fees described above, producers will be charged \$3 per day for each parking space dedicated for their market stand.
 - This parking fee is not considered when computing the seasonal payment with the 5% discount, as described above in the Market Fee section.
- **Farmers Market Producer License Requirements:**
 - Producers who sell non-packaged potentially hazardous foods or products that need to be refrigerated are required to obtain a Farmer's Market License from the Montgomery County Health Department. An inspection at market by Health Department agents is part of the licensing process.
 - Producers who sell whole, uncut produce and agricultural products or pre-packaged non-potentially hazardous foods are exempt from this license requirement.
 - For more information, visit: <https://www.montcopa.org/532/Farmers-Market-Producer>.
- **Business Privilege/Mercantile Tax Requirements:**
 - All producers selling value-added products must register for and pay the Lower Merion Township Business Privilege/Mercantile Tax. The forms to register your business and to calculate the tax based on your gross receipts can be found at this web address: <http://www.lowermerion.org/services/finance-department/business-tax-division>

Media Borough

- **Business Privilege/Mercantile Tax Registration:**
 - Producers must apply for a Media Borough Business Privilege/Mercantile Tax license. Producers are required to pay the \$50 license fee but not required to pay mercantile taxes. For more information, visit: <https://www.mediaborough.com/finance/business-privmercantile-tax-registration>

- Farmers' Market Health Inspection:
 - The Media Borough Health Officer will inspect all market producers. All producers, except those that sell only fruits and vegetables, must pay a \$30 Health Inspection fee to the Media Borough.

Borough of Ambler

- Lot Use Fees:
 - In addition to the Market Fees described above, producers will be charged \$1 per day for use of the SEPTA lot.
 - This Lot Use Fee is not considered when computing the seasonal payment with the 5% discount, as described above in the Market Fee section.
- Business Privilege License
 - Producers must obtain a Business Privilege License from the Borough of Ambler.
- Farmers Market Producer License Requirements:
 - Producers who sell non-packaged potentially hazardous foods or products that need to be refrigerated are required to obtain a Farmer's Market License from the Montgomery County Health Department. An inspection at market by Health Department agents is part of the licensing process.
 - Producers who sell whole, uncut produce and agricultural products or pre-packaged non-potentially hazardous foods are exempt from this license requirement.
 - For more information, visit:
<https://www.montcopa.org/532/Farmers-Market-Producer>.