

STATE OF TEXAS §
 §
COUNTY OF BRAZOS §

BRAZOS VALLEY FARMERS' MARKET
FIRST FRIDAY FARMERS' MARKET VENDOR AGREEMENT

This Farmers' Market Vendor Agreement for Destination Bryan's Fiscal Year 2022 (the "Agreement") is entered into on this the ____ day of _____, 2021 by and between Destination Bryan ("DB") a 501(c)(6) tax exempt, Texas non-profit corporation, doing business at PO Box 1074 Bryan, Texas 77806 and Brazos Valley Farmers' Market ("BVM") (each, a "Party", and together, the "Parties"). The Parties agree as follows:

WHEREAS, DB operates First Fridays in Downtown Bryan on the first Friday of every month between the hours of 5pm and 10pm; and

WHEREAS, DB has the authority to review all complete applications and approve or deny groups or individuals applying for vendor permits in a non-discriminatory manner for First Friday; and

WHEREAS, DB seeks to provide high quality farmers' market vendors for First Friday to add to the attendee experience; and

WHEREAS, BVM operates a farmers' market in the Bryan/College Station area with local farmers' market vendors.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE I.
TERMS

- 1.1 **Amount.** In consideration of the activities and duties to be performed by BVM under this Agreement, BVM agrees to pay DB during the Term of this Agreement, the total sum of ONE THOUSAND ONE HUNDRED DOLLARS (\$1100.00).
- 1.2 **Term.** The term of this Agreement shall commence November 5, 2021 and extend through September 30, 2022.
- 1.3 **Dates.** The Agreement represents only events designated as First Fridays, dated as follows:
 - November 5, 2021
 - December 2, 2021
 - January 7, 2022
 - February 4, 2022
 - March 4, 2022
 - April 1, 2022
 - May 6, 2022
 - June 3, 2022
 - July 1, 2022
 - August 5, 2022
 - September 2, 2022

ARTICLE II.

PAYMENTS

2.1 Payment. The total sum of ONE THOUSAND ONE HUNDRED DOLLARS (\$1100.00) shall be paid within THIRTY (30) DAYS upon execution of the Agreement, upon receipt of invoice and supporting documentation for payment as set forth below.

ARTICLE III. DUTIES AND ACTIVITIES

3.1 BVFM agrees to perform the following duties and activities during the Term of the Agreement:

- 3.1.1** Provide farmers' market vendor services for First Friday events hosted by DB.
- 3.1.2** Approve farmers' market vendors for First Friday in a non-discriminatory manner.
- 3.1.3** Abide by vendor rules and requirements provided, in writing, by DB.
- 3.1.4** Abide by City of Bryan ordinances.

ARTICLE IV. DB OBLIGATIONS AND WARRANTIES

4.1 DB agrees and warrants to BVFM the following:

- 4.1.1** That BVFM will retain exclusive rights to farmers' market vendor services during the Term of the Agreement.
 - 4.1.1.a** DB reserves the right to allow additional non-competing vendors and vendor organizations, including non-profits, artists and artisans markets, public displays, entertainment, food trucks, and other vendors not deemed to provide similar goods, products, or services as BVFM and covered under this agreement.
- 4.1.2** That it will provide, at a minimum, a reasonable quality of service.
- 4.1.3** That it will market First Friday in order to attract attendees.
- 4.1.4** That it will provide a safe area for farmers' market vendors to engage with customers.

ARTICLE V. GENERAL PROVISIONS

5.1 Subcontract for Performance of Services. Nothing in this Agreement shall prohibit, nor be construed to prohibit, the agreement by DB with another private entity, person, or organization for the performance of those duties and activities described herein. In the event that DB enters into any arrangement, contractual or otherwise, with such other entity, person or organization, DB shall cause such other entity, person, or organization to indemnify the City by way of an indemnification agreement in a form acceptable to the City Attorney, and to adhere to, conform to, and be subject to all provisions, terms, and conditions of this Agreement and to Texas Tax Code, Chapter 351, including reporting requirements, separate funds maintenance, and limitations and prohibitions pertaining to expenditure of the agreed payments and Hotel Tax Revenue.

5.2 Independent Contractor. BVFM shall operate as an independent contractor as to all duties and activities to be performed under this Agreement and not as an officer, agent, servant, or employee of DB. BVFM shall have exclusive control of its operations and performance of its activities and services hereunder, and such persons, entities, or organizations performing the same and BVFM shall be solely responsible for the acts and omissions of its directors, officers, employees, agents, and subcontractors. BVFM shall not be considered a partner or joint venturer with DB, nor shall BVFM be considered nor in any manner hold itself out as an agent or official representative of DB.

ARTICLE VI. INDEMNIFICATION AND RELEASE

6.1 Indemnification and Release. BVFM agrees to indemnify and hold harmless DB, its elected officials, officers, agents, and employees from and against any and all loss, costs, or damage of any kind, nature, or description that may arise out of or in connection with this Agreement whether or not the claim or cause of action results from any negligence of the City or any of its elected officials, officers, agents, or employees. BVFM assumes full responsibility for the work performed and services to be provided, and hereby releases, relinquishes and discharges DB, its elected officials, officers, agents, and employees from any and all claims, demands, causes of action of every kind and character, including the cost of defense thereof, for any injury to, including death of, any person (whether employees or agents of either of the parties hereto or third persons) and any loss of or damage to property (whether the property is that of either of the parties hereto or of third parties) that is caused by or alleged to be caused by, arising out of, or in connection with the BVFM's work or services provided hereunder whether or not said claims, demands, or causes of actions are covered in whole or part by insurance.

ARTICLE VII. TERMINATION

7.1 Termination. Either party may terminate this Agreement upon written notice to the other Party in the event of:

7.1.1 The other Party's material breach upon three (3) business days' prior written notice to the other party, if such material breach remains uncured, if curable. The written notice must specify the material breach, including the date(s) the breach occurred, and provide the other party with a reasonable opportunity to cure the breach. Failure to do so will itself be a material breach of this Agreement.

7.1.2 Without cause upon thirty (30) days' prior written notice to the other Party.

7.2 Effects of Termination. Effects of termination are subject to the below:

7.2.1 If BVFM terminates this Agreement, without cause under Section 13.1.2 above, BVFM shall pay the remaining monthly/annual fees for the remainder of the Term. BVFM acknowledges and agrees that this payment is not a penalty but represents liquidated damages.

7.2.2 If BVFM terminates this agreement under Section 13.1.1 or DB terminates under Section 13.1.2 above, BVFM shall be entitled to a pro-rata refund of all prepaid

amounts for the remainder of the Term had this Agreement not been terminated.

7.3 Survival of Obligations after Termination. The following obligations shall survive termination of this Agreement for any reason:

- 7.3.1** Obligation(s) to make payments of all amounts due (as set forth herein).
- 7.3.2** Obligation(s) relating to warranties, indemnification and limitation of liability.
- 7.3.3** Obligation(s) regarding jurisdiction, contract interpretation, and dispute adjudication.

Termination of this Agreement will not relieve either Party of any obligation arising out of this Agreement through the date of termination.

ARTICLE VIII. MISCELLANEOUS

- 8.1 Recitals Incorporated.** The Recitals set forth above are incorporated herein by reference as if fully set forth in the body of this Agreement.
- 8.2 Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective organizations.
- 8.3 Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
- 8.4 Amendment.** No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
- 8.5 Assignment.** BVFM shall not assign this Agreement, and the rights and obligations contained herein, without the prior written approval of DB's sole discretion.
- 8.6 Successor and Assigns.** This Agreement and each provision hereof, and each and every right, duty, obligation, and liability set forth herein shall be binding upon and inure to the benefit and obligation of City and DB and their respective successors and permitted assigns.
- 8.7 Applicable Law and Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Brazos County, Texas.
- 8.8 Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of either party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

8.9 Force Majeure. In the event a party to this Agreement is rendered unable wholly or in part by an event of Force Majeure to carry out its obligations incident to this Agreement, other than the payment of sums of money due, it is agreed that upon giving notice and full particulars of the event of Force Majeure in writing to the other party after the occurrence of the cause relied on, then the obligation of the party giving such notice, so far as they are affected by such event of Force Majeure from its inception, shall be suspended during the continuance of any inability so caused but for no longer period. Such event shall be, as far as possible, remedied with all reasonable dispatch.

8.9.1 Force Majeure Events: (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockages in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of DB.

8.10 Invalidity. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

8.11 Notice. Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person or sent by certified mail to the last business address as listed herein. Each party has the right to change its business address by giving at least thirty (30) days advance written notice of the change to the other party.

DB: DESTINATION BRYAN
Attn: Executive Director
P.O. Box 1074
Bryan, Texas 77806-1074

BVFM: BRAZOS VALLEY FARMERS' MARKET

Attn: _____

Address: _____

8.12 Duplicate Originals. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties hereto, acting under the authority of the Board of Directors of Destination Bryan and the Board of Directors of Brazos Valley Farmers' Market, have

caused this Agreement to be executed in duplicate originals, to be effective on the date first written above.

DESTINATION BRYAN (“DB”)

**BRAZOS VALLEY FARMERS’ MARKET
 (“BVMF”)**

John Friebele, Executive Director

Print Name

Signature