



VENDOR AGREEMENT – SUMMER 2023

DOWNTOWN WESTFIELD ASSOCIATION

This Westfield Farmers Market (WFM) Vendor Agreement ("Agreement") Summer 2023 is made today between the Downtown Westfield Association ("DWA"), located at 116 East Main Street, Westfield, IN 46074-8924, and you as a vendor (Hereinafter, "Vendor").

RECITALS

The City of Westfield owns and operates the Grand Junction Plaza located at 225 South Union Street, Westfield, IN 46074. The Vendor desires to use a 10-foot x 10-foot space within the Grand Junction Plaza or on Jersey Street at the discretion of DWA for the use and purposes outlined in this Agreement; and,

The Downtown Westfield Association agrees to permit the Vendor's use of a vendor space according to the terms and conditions of this Agreement:

IN CONSIDERATION of the mutual covenants and conditions, the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Downtown Westfield Association and Vendor agree as follows:

A. LICENSE

The Downtown Westfield Association will grant a temporary exclusive license to the Vendor to use a vendor booth space in the specified location determined by the WFM Market Manager. The license is based on information provided in the Vendor Application.

B. PROPOSED USE

The Vendor will use the licensed space only for items and services approved by the WFM Staff. Any brochure, handout, catalog, or price list that describes your product or service must be included with your application and be approved for distribution by the WFM Staff. This proposed use is pursuant to and in compliance with this Agreement's terms and conditions and for no other purpose (the "Permitted Use"). The Vendor will take all necessary action required to ensure the safety of the participants, invitees, guests, and the public attending the event and will be solely liable for any damages or injuries, including death, that arise as a result of the Permitted Use of the licensed space. The Vendor's requirements for the preparation and setup of the licensed space as defined in the WFM Information (Schedule I), approved by the WFM Staff and attached to this Agreement.

C. RESERVED DATES

Upon payment of the WFM invoice, the licensed space will be reserved for the Vendor specified in their invoice once approved.

D. USE REQUEST / EVENT FEE

To reserve the licensed space, the Vendor must complete, execute, and deliver this Agreement to the WFM Staff. Any request may be denied by the WFM Staff if, in its sole discretion, it determines that the proposed request is inconsistent with the overall mission of the WFM. Upon approval of the Application, the Vendor must pay all fees for the entire season in full to use the licensed space. In the event that a Vendor misses a market, or a market is canceled due to weather, the fees will be non-refundable. Fees are non-refundable.

E. FEES

All fees, costs and damages incident to the use of the licensed space or the Common Areas will be paid without offset by the Vendor.

The base fees for the use of the licensed space ("Vendor Fees") are controlled by the WFM Staff and are outlined in the Application (Schedule I), attached hereto and incorporated by reference herein. The Vendor Fees do not include any of the cost of any staffing, security services, catering, or event management, which are the sole cost and expense of the Vendor and are subject to the terms and conditions of this Agreement.

In addition to the Vendor Fees, the Vendor will be required to pay (i) any charges to clean up Grand Junction Plaza or Jersey Street and to restore Grand Junction Plaza or Jersey Street to the condition existing before the event incurred by WFM Staff after an event, and (ii) the cost to repair and replace any damage to Grand Junction Plaza or Jersey Street.

F. PARKING, UNLOADING & LOADING

The Vendor will be provided with detailed loading and unloading instructions before the event. Vendor will have the non-exclusive use of those specific parking areas at the WFM subject to any and all rules and regulations for those areas, including restricted or reserved spaces and drop-off and loading zones.

G. DOWNTOWN WESTFIELD REGULATIONS, POLICIES, AND ORDINANCES

The Vendor will ensure that its officers, employees, agents, contractors, licensees, guests, and invitees abide by all rules, regulations, and policies promulgated by the City of Westfield for Downtown Westfield. Please find the listing of rules, regulations, and policies below. Any updates or amendments will be provided to Vendor before the event.

- a. NO ANIMALS (except service animals with paperwork and bib) beyond parking lots. Farmers Market Patrons will be allowed to bring their pets to the Market. Vendors are not permitted to have pets at the Market while they have a booth up at the Market.
- b. NO tobacco products, illegal drugs, or chemicals of any kind.
- c. NO fireworks of any kind.
- d. NO missile/projectile like objects.
- e. NO glass bottles or aluminum cans.
- f. NO air horns, Vuvuzelas, or whistles of any kind.
- g. NO skateboards, rollerblades, roller skates, roller shoes, etc.
- h. NO unapproved pamphlets, handouts, displays, advertisements, etc.
- i. NO unauthorized merchandise, food, beverage, or photography sales.
- j. NO unauthorized vehicles, scooters, carts, or the like beyond parking lots.
- k. Overnight parking is not permitted.

H. DAMAGE AND ALTERATION OF GRAND JUNCTION PLAZA

- a. Vendor and its officers, employees, agents, contractors, licensees, guests, and invitees will not injure, damage, mar, or deface Grand Junction Plaza, its associated facilities, the parking areas, the areas surrounding Grand Junction Plaza, and improvements, appurtenances and any equipment contained or located therein.
- b. Vendor will not cause or permit anything to be done that in any way injures, damages, mars or defaces Grand Junction Plaza, its associated facilities, the parking areas, the areas surrounding Grand Junction Plaza, and improvements, appurtenances, and equipment contained or located therein, and will not drive or permit to be driven, nails, hooks, tacks or screws into any part thereof and will not make or allow to be made any alterations of any kind therein.

I. EQUIPMENT

Vendor agrees that it and its officers, employees, agents, and contractors will only use equipment, furniture, or fixtures that comply with the City of Westfield Fire Marshal standards. It must be flame-retardant, in good working order, and regularly maintained. All equipment must be supplied by the Vendor and approved by the WFM Staff.

J. HAZARDS

Vendor and its employees, agents, and contractors will not employ, use, or ignite any fireworks or other pyrotechnical devices or equipment without the City of Westfield's prior written approval, which may be granted, withheld, or conditioned in their sole, absolute discretion.

K. NON-SMOKING

The licensed spaces are designated as non-smoking at all times. Vendor will be responsible for any, and all fines levied for violation of this policy and for any damage resulting from the violation of this policy.

L. USE OF NAME / ADVERTISING

- a. Without the express written consent of the WFM Staff, the Vendor will not use WFM's logo or trademark in its advertising.
- b. An approved Vendor can use the 'Westfield Farmers Market at Grand Junction Plaza' in all social media and advertisements without written consent.
- c. The Vendor agrees to submit all press releases and advertisements to the WFM Staff for review and approval by the WFM Staff before publication.
- d. No signs, messages, flyers, posters, or other advertising materials may be posted, displayed, or distributed, nor will Vendor make any announcements by loudspeaker, public address system, or otherwise without having obtained prior written permission from WFM Staff.
- e. The WFM Staff must approve all signage. Any approved materials may not be fastened or affixed to any part of Grand Junction Plaza except in locations designated and approved by the WFM Staff and may not be permitted to interfere with crowd movement and safety.

M. LICENSES AND COPYRIGHTS

Vendor agrees and warrants that no music, literary or artistic work, or property protected by license or copyright will be performed, reproduced, or used in connection with its activities in licensed space unless the Vendor, its officers, employees, agents, or contractors have obtained permission from the copyright or license holder or have obtained appropriate licensing to use such works.

N. BROADCAST AND RECORDING RIGHTS

WFM Staff reserves all rights and privileges for radio and television broadcasts, whether live or transcribed for delayed transmission, and all visual or audio recordings originating from the Licensed space. Broadcasting and recording, and the allocation of revenues derived therefrom, will be negotiated as a part of the execution of this Agreement. Should WFM Staff grant to the Vendor any such rights and privileges, WFM Staff reserve the right to require advance payment of any estimated costs that WFM Staff may incur with respect to the broadcasts or recordings. Any contract involving broadcast or recording rights must first be submitted to the WFM Staff for review and approval by the WFM Staff and then be signed by all relevant parties thereto before any broadcast or recording date.

O. COMPLIANCE WITH LAWS

- a. The Vendor, its officers, employees, agents, contractors, licensees, guests, and invitees will comply with all pertinent federal, state, local and municipal laws, codes, ordinances, rules, and regulations, including but not limited to

fire, building safety and health codes applicable to the Permitted Use of Licensed space.

- b. The Vendor, its officers, employees, agents, and contractors will obtain and maintain in full force and effect all permits, licenses, and authorizations required by governmental and quasi-governmental agencies.
- c. The Vendor will advise the WFM Staff of all permits and licenses required for its Permitted Use.
- d. The Vendor will pay any fees and expenses required relative thereto.
- e. The Vendor will pay all taxes imposed by law in connection with its Permitted Use of the Licensed space.

P. NOTICES

All notices by the parties to each other hereunder will be in writing, addressed as follows:

To DWA:

Downtown Westfield Association Attn: Market Manager
116 East Main Street, Westfield, IN 46074-8924

Q. INSURANCE

The Vendor must provide a General Liability Certificate of Insurance for \$1,000,000 listing the City of Westfield (225 South Union Street, Westfield, IN 46074) and Downtown Westfield Association (116 East Main Street, Westfield, IN 46074-8924) as additionally insured.

R. INDEMNIFICATION

- a. Vendor agrees to defend, indemnify, and hold harmless the City of Westfield, Westfield Welcome Department, Parks & Trails Department, the Downtown Association, and WFM Staff and their officers, employees, and agents, their successors, their respective employees, and agents, to the fullest extent permitted by law from and against any and all claims or demands whatsoever, including associated costs, expenses, and reasonable attorneys' fees incurred on account thereof, that may be asserted for any loss, damage, death, or injury to persons or property arising in any manner out of or incident to the use and occupancy of the Licensed space by Vendor, its event participants, employees, agents and contractors, Vendor's acts or omissions, or Vendor's performance or nonperformance of this Agreement.

S. MODIFICATION/CANCELLATION

Absent a written agreement between the WFM Staff and the Vendor, this

Agreement may not be modified nor canceled by WFM Staff except when the Vendor fails to comply with the terms and conditions of this Agreement, hinders,

or otherwise interferes with the use of Grand Junction Plaza by another Vendor, tenant or other permitted organization, fails to show adequate financial resources for the presentation of the event, is not willing or able to perform adequately its duties and responsibilities required for the event or similar cause in the sole judgment of the WFM Staff or City of Westfield or where the Vendor poses a potential hazard to public safety.

T. FORCE MAJEURE

Any delay or failure of either party to perform its obligations hereunder shall be excused if and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, or court injunction.

U. VIOLATION OF LAWS

If in WFM Staff's reasonable opinion, at any time the Vendor's officers, employees, agents, contractors, licensees, guests, or invitees violate(s) an applicable rule or regulation, the rules and regulations (if any) of the Downtown or the ordinance or the applicable laws of the City of Westfield, Hamilton County or the State of Indiana or the United States of America, Vendor will direct the offender to cease and desist from continuing such illegal or improper use or behavior. Notwithstanding anything to the contrary contained in this Agreement, the WFM Staff expressly reserves its right at any time upon prior notice to Vendor (except in emergencies) to cause the removal of any of Vendor's officers, employees, agents, contractors, licensees, guests, or invitees, who in the reasonable discretion of WFM Staff has engaged or is engaging in illegal, undesirable, disruptive or hazardous behavior.

V. CHOICE OF LAW

This Agreement will be governed by the laws of the State of Indiana, without regard to its choice of law principles. Litigation of all disputes between the parties arising from or in connection with this Agreement will be conducted in the Circuit or a Superior Court of Hamilton County, Indiana.

W. AUTHORITY

Each party to this Agreement represents and warrants that the person signing this Agreement is fully authorized by the party to execute this Agreement for and on behalf of the party and bind the party to the terms and conditions set forth herein.

X. ENTIRE AGREEMENT

This Agreement, together with any exhibits or addenda annexed hereto, constitutes the entire Agreement of the parties on the specific subject matter of this Agreement only and does not in any way affect any other agreement by and

between the parties to this Agreement and supersedes all prior representations, understandings, and agreements between the parties with respect to the subject matter. Any invalidity, in whole or in part, of any provisions of this Agreement, will not affect the validity of any other of its provisions. No term or provision hereof will be deemed waived, and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The provisions of this Agreement that by meaning and context are intended to survive the completion of performance, expiration, or termination of this Agreement (which will include by way of example and not limitation repair and indemnification provisions) will so survive the completion of performance, expiration or termination of this Agreement. This Agreement may be amended or modified only in writing executed by authorized representatives of each party.

Y. COUNTERPARTS

This Agreement and any amendments may be executed in any number of counterparts, each of which will be an original and all of which together will constitute the same document, binding on all Parties, notwithstanding that each of the parties may have signed different counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date digitally signed.