



**Special/Study Session Meeting
6:00 p.m., Monday, November 19, 2018
Conference Room
23600 Liberty Street
Farmington, MI 48335**

STUDY SESSION AGENDA

- 1. Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment**
- 4. Plante Moran Annual City Audit Presentation**
- 5. Discussion on Market Manager Contract**
- 6. Discussion on Farmington Civic Theater Manager Contract**
- 7. Other Business**
- 8. Council Comment**
- 9. Adjournment**

**Farmington City Council
Staff Report**

Council Meeting
Date: November 19, 2018

**Item
Number**
5

Submitted by: City Manager

Agenda Topic: Farmer's Market General Manager Service Agreement

Proposed Motion: N/A

Background: At the beginning of 2018 Chris and I met with Walt Gajewski to begin discussing his General Manager Service agreement with the City. The duties of the Market Master have evolved over the last several years with the inclusion of the Greens Market, Polish Festival and the Italian Festival. Payment for his services has not increased since 2014. We got busy with the millage and put it off until after the election. As you know the market is a favorite event in the city and has been named best Farmer's Market in the area for the second year in a row. This is all because of the time and effort Walt puts in to making it a destination each Saturday during the season.

We negotiated with Walt that the City would make a single, one-time payment of Four Thousand (\$4,000) dollars to Walt on December 1, 2018. Thereafter, beginning on January 1, 2019, the City agrees to pay Walt Twenty-Seven Thousand Dollars (\$27,000) for the year, payable in monthly installments of Two Thousand Two Hundred and Fifty (\$2,250) Dollars on the 1st day of each month. Thereafter, beginning on January 1, 2020, such amount shall increase by the amount of the salary increase received by non-union employees of the City, for so long as the Agreement remains in force and effect.

Materials: Proposed Agreement

**CITY OF FARMINGTON
FARMINGTON FARMERS AND ARTISANS MARKET
GENERAL MANAGER SERVICE AGREEMENT (2018)**

THIS AGREEMENT is made and entered into this ~~1st~~ day of ~~January~~~~November~~, ~~2015~~~~2018~~, by and between the City of Farmington, a Michigan Municipal Corporation, hereinafter referred to as the "City," whose address is 23600 Liberty Street, Farmington, MI 48335, and Wing Walker, Inc., a Michigan corporation, whose address is 34002 Shiawassee, Farmington, MI 48335, hereinafter referred to as the "Contractor," both of who understand as follows:

RECITALS:

City desires to retain the services of Contractor as General Manager of the Farmington Farmers and Artisans Market, hereinafter referred to as the "Market", and to establish certain compensation, conditions of service, and working conditions for Contractor; and

Contractor desires to provide services as the General Manager of the Farmington Farmers and Artisans Market.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows.

Section 1. Duties

The City agrees to engage the services of Contractor as the General Manager of the Market to perform the functions and duties specified in the Scope of Services attached as Exhibit A hereto and incorporated herein, and to perform such other legally permissible and proper duties and functions as the General Manager of the Market shall from time to time assign.

Section 2. Term

The term of this Agreement shall ~~be two years from the date set forth above~~from the effective date as set forth herein until December 31, 2020, and shall renew automatically for two successive one-year periods unless either party provides notice at least 90 days prior to the expiration of that term. Either party may terminate this Agreement upon ninety (90) days written notice to the other party. Alternatively, the City may terminate the Agreement at any time for cause, including, but not be limited to, the inability of Contractor to perform the Work required in the Scope of Services, conviction of a felony by any representative of Contractor, or the scheduling, display, presentation, or promotion of events, programs, or vendors which are not in accordance with the community standards of the City.

In the event of termination, Contractor shall be paid as compensation in full for services performed to that date an amount calculated in accordance with Section 3, below. Such amount shall be paid by the City upon Contractor's delivering or otherwise making available to the City all documents, equipment, property and such other information or materials as may have been accumulated by Contractor in performing the services included in this agreement, whether completed or in progress.

Section 3. Payment for Services

A. *Base Payment.* ~~The City agrees to pay Contractor for its services rendered pursuant to this Agreement the amount of Twenty-Four Thousand Dollars (\$24,000) per year, payable in monthly installments of Two Thousand (\$2,000.00) Dollars on the ____ day of each month. The City shall make a single, one-time payment of Four Thousand (\$4,000) dollars to Contractor on December 1, 2018. Thereafter, beginning on January 1, 2019, the City agrees to pay Contractor Twenty-Seven Thousand Dollars (\$27,000) for the year, payable in monthly installments of Two Thousand Two Hundred and Fifty (\$2,250) Dollars on the ____ day of each month. Thereafter, beginning on January 1, 2020, such amount shall increase by the amount of the salary increase received by non-union employees of the City, for so long as the Agreement remains in force and effect.~~

B. *Technology Allowance.* Contractor will receive \$100/month allowance to defray the cost of a cell phone and/or personal communication device. Contractor shall be responsible for all expenses and services associated with the cell phone and/or portable communication device.

C. *Incentive Payment.* Contractor shall also receive an incentive payment for producing a profitable operation in the form of 20% of any profits realized by the City with respect to the Market from January 1, through the following December 31, and for each successive full one-year period thereafter for which the Contract is in place. Such amount shall be payable on December 31, provide the Contract has not been terminated by either party provided above. "Profits" shall be the amount remaining from the sum of all "Revenues" after subtracting the sum of all "Expenditures" from the Revenues. The following fees and amounts shall be included as *Revenues*:

All vendor space rentals and charges; sponsorships; marketing promotions; grants; merchandise sales; and amounts received from other related programs and activities.

The following costs shall be included as *Expenditures*:

All expenses related to the employment agreement; supplies and products; advertising; promotional items; entertainment; subscriptions; memberships; training and professional development; travel in accordance with city policies; subcontractors to perform specified duties on behalf of the Market; hourly rates for City Department of Public Works personnel to

perform repairs and maintenance; and, other contractual services.

Expenditures shall not include:

Major capital improvements or capital maintenance items involving the pavilion or Riley Park; major equipment purchases exceeding \$1,000 such as computer systems, or audio systems.

Section 4. Independent Contractor

A. In the performance of this Contract, the relationship of Contractor to the City shall be that of an independent contractor and not that of an employee or agent of City. Contractor is and shall perform under this Contract as an independent contractor, and no liability or responsibility with respect to benefits of any kind, including without limitation medical benefits, worker's compensation, pension rights, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party as a result of the performance of this Contract..

B. Contractor, as an independent contractor, is not authorized to enter into or sign any agreements on behalf of the City or to make any representations to third parties that are binding upon the City; provided, however, that Contractor may enter into rental agreements utilizing a form of agreement provided by the city and within terms authorized by the City Manager, and agreements for promotional or special events upon notice to the City Manager and for amounts less than \$1,000.00.

C. Except as may be specifically stated and agreed to in Exhibit A, Contractor shall perform all of the work under this Contract and no other person or entity shall be assigned or sub-contracted to perform the work, or any part thereof, unless approved by the City in advance.

Section 5. Performance Evaluation

City shall annually review and evaluate the performance of Contractor, on a date to be set by the City and pursuant to the evaluation criteria set forth in the Scope of Services attached as Exhibit A hereto.

Section 6. Hours of Work

The Contractor shall work all hours reasonably necessary to manage the Market operation in accordance with the activities described in the Scope of Work attached as Exhibit A hereto.

Section 7. Insurance and Indemnification

The City agrees to defend, pay on behalf of, indemnify, and hold harmless

Contractor for any and all claims, demands, suits or losses which may be asserted or claimed against him while acting only within the Scope of Work as set forth herein. This agreement **does not apply** to any other work or job performed by Contractor for any other governmental entity, corporation, partnership, business venture, or self-employment opportunity. The City shall have no duty to indemnify and hold harmless Contractor for any loss, claim or other liability that is the result of the Contractor's sole negligence or of its wrongful act or acts. Contractor shall indemnify and hold harmless the City for liability that is the result of the Contractor's sole negligence or of its wrongful act or acts.

Section 8. Other Terms and Conditions

A. Contractor acknowledges that the Farmington Farmers and Artisans Market as a publicly-owned event and that the programs, rentals, and events conducted or presented at or by the Market shall be in accordance with the community standards of the City in the City's discretion.

B. Contractor acknowledges that all rentals and uses of the Market shall comply with the Farmington Zoning Ordinance and applicable code and ordinance provisions.

C. The City, in consultation with the Contractor, shall fix any such other terms and conditions of service, as it may determine from time to time related to the performance of Contractor, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or the Scope of Services set forth in the Agreement.

D. Upon completion or termination of this agreement, Contractor for a one year period thereafter shall not engage in managing, operating, or organizing a similar farmers and artisans market within a fifteen (15) mile radius of Downtown Farmington without prior consent of the City of Farmington.

E. Upon mutual agreement of the City and Contractor, the parties may enter into a letter of understanding for additional services outlining the scope of service to be performed, compensation, and other relevant considerations.

Section 9. Notices

Notices pursuant to this Agreement shall be given by first-class mailing with the United States Postal Service, postage prepaid, addressed as follows:

- (1) City Manager, 23600 Liberty Street, Farmington, MI 48335; and
- (2) Walter A. Gajewski, 34002 Shiawassee Road, Farmington, MI 48335.

Alternatively, notices required pursuant to this Agreement may be personally

served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of first-class mailing of such written notice with the United States Postal Service.

Section 10. General Provisions

A. The text herein shall constitute the entire agreement between the parties. This Agreement contains the entire understanding and agreement between the parties concerning the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations and undertakings, whether written or oral, between the parties with respect thereto.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of Contractor.

C. A waiver by City of a breach of any provision of this Agreement by Contractor shall not operate or be construed as a waiver of any subsequent breach by Contractor.

D. This Agreement shall become effective ~~January 1~~November, ~~2015~~2018.

E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

F. Contractor agrees to submit appropriate documentation for expenses to be reimbursed pursuant to this Agreement.

G. Confidentiality.

(1) The Contractor agrees that he will not, at any time during the term of employment or thereafter, disclose or use any trade secret, proprietary or confidential information of the City or any subsidiary or affiliate of the City, obtained during the Contract, except as required pursuant to the Contract or with the written permission of the City or, as applicable, any subsidiary or affiliate of the City.

(2) The Contractor agrees that at the time of the termination of this Contract with the Contractor, whether at the instance of the Contractor or the City, and regardless of the reasons therefore, he will deliver to the City, and not keep or deliver to anyone else, any and all notes, files, memoranda, papers and, in general, any and all physical matter containing information, including any and all documents significant to the conduct of the business of the City or any subsidiary or affiliate of the City which are in his possession, including, contact

lists and information and similar items compiled during the course of his employment.

(3) The Contractor agrees that the City's remedies at law would be inadequate in the event of a breach or threatened breach of this Confidentiality provision, and, accordingly, the City shall be entitled, in addition to its rights at law, to an injunction and other equitable relief without the need to post a bond.

H. The City, in its sole discretion, may agree to assign this Agreement if requested by Contractor.

IN WITNESS WHEREOF, the City of Farmington has caused this Agreement to be signed and executed on its behalf by the City Manager, and Contractor has signed and executed this Agreement, both in duplicate, the day and year first above written.

**THE CITY OF FARMINGTON, a Michigan
Municipal Corporation**

By: David M. Murphy
Its: City Manager

**WING WALKER, INC., a Michigan
corporation**

By: Walter A. Gajewski
Its: President

EXHIBIT A SCOPE OF SERVICES

The General Manager is responsible for all aspects of the Farmington Farmers and Artisans Market operations. The duties and responsibilities shall include, but not limited to, the following:

Planning and Communications

1. Plan, prepare, and present an annual schedule for the Market to the City Council for approval by the end of January for the upcoming year. Said schedule shall include proposed dates to begin and end the market, starting time and ending time for each market day, area in which market activities will take place, marketing plan, and any proposed special programs and events.
2. Develop marketing and promotional material for the Market along with a plan to disseminate material. All marketing and promotional materials shall be consistent with the City logo, tag lines, or shall be pre-approved by the City Manager prior to use.
3. Recruit vendors to participate in the Market, individuals or businesses to provide selected displays and demonstrations, secure and coordinate entertainment.
4. Recruit, train, supervise, schedule, discipline as necessary, all volunteers associated with the operation of the Market in accordance with City personnel policies and procedures.
5. Maintain positive working relations via on-going communications involving vendors, local businesses, volunteers, city staff, and other Market stakeholders.
6. Maintain up-to-date Market presence on the Internet.
7. Focus on continual improvement of market layout and flow of pedestrian traffic for optimal shopping experience.

Administration and Reporting

1. Maintains appropriate paperwork and databases associated with vendor rentals, assigns vendor spaces, collects daily rental fees, issues receipts as appropriate, and track payments; delivers collected fees to the City Treasurer's Office on a weekly basis. Electronic databases need to be submitted to City Manager's office at proper intervals in order to ensure latest versions are held in City files.
2. Purchasing of all supplies and products, equipment rentals, and other

miscellaneous items in accordance with city purchasing policies and procedures. Coordinate with the City Manager and other designated City officials regarding purchases or contracts exceeding \$1,000 in cost.

3. Coordinate with City officials regarding major repairs and maintenance with the Pavilion and Riley Park such as: electrical, plumbing, heating, roof repairs, pest control, deficiencies with flooring, and other site issues.
4. Coordinate with the City Manager's office any property or liability claims submitted against the Market.
5. Follow all accounting procedures and policies established by the Farmington Treasury Department regarding receipting, collection, and deposit of all revenues generated by the operation of the Market.
6. Review, sign, and submit all invoices and accounts payable in accordance with procedures established by the Farmington Treasury Department.
7. Assist in developing the annual operating budget and monitoring its activity.

Weekly Market Responsibilities

1. Maintains records of market activity and outcomes; conducts periodic surveys of market participants; gathers and reports data related to sales and attendance; prepares a weekly written report on market activity.
2. Oversees the opening and closing of the Market including insuring the market area is properly cleaned at the conclusion of the weekly market or special event in order for the pavilion and park area to be used for the enjoyment of the general public.
3. Insure that all food and alcohol vendors comply with the standards established by the Department of Public Health standards and Michigan Liquor Control Commission, or other regulatory agency and are properly licensed.
4. Maintain quality control through effective communications and proper enforcement of market rules and regulations.
5. Assists with merchandising, special events and entertainment, in conjunction with city staff and Friends of the Market volunteers, as needed.
6. Coordinate "Friends of the Market" volunteers for weekly and special activity needs.

7. Coordinate attendance and participation for: cooking demonstrations, Master Gardeners, Little Sprouts kids' area, non-profits, local restaurants and businesses.
8. Track and collect, with volunteer assistance, customer metrics via surveys, attendance counts, and other methods as coordinated with City Manager.
9. Interprets and enforces market rules and regulations as adopted by the Farmington City Council in conjunction with Downtown Development Authority Board of Directors; investigates buyer and seller complaints and mediates disputes; performs customer relations.

**Farmington City Council
Staff Report**

Council Meeting
Date: November 19, 2018

**Item
Number**
6

Submitted by: City Manager

Agenda Topic: Addendum to Civic Theater Manager's Contract

Proposed Motion: N/A

Background: Last January Scott Freeman took over the administration of the commercial dumpster in the north lot. Scott got bids from different garbage haulers and entered into an agreement with Republic. The cost of the garbage hauling is split amongst the participating businesses in the north lot. They write checks to the Civic Theater and the Civic pays the hauler. In order to have a proper accounting of this, we need to have an addendum to Scott's contract that adds this as one of his duties. With the added duties of overseeing the garbage collection and collecting the money from all the participants, we have negotiated with Scott for a one time payment of \$1,312.50 in November and starting in December an increase of his pay by \$125.00 per month, all of which is covered by the participants in the cost of the refuse collection.

Materials: None

**FIRST AMENDMENT TO
FARMINGTON CIVIC THEATER
GENERAL MANAGER SERVICE AGREEMENT**

THIS FIRST AMENDMENT TO FARMINGTON CIVIC THEATER GENERAL MANAGEMENT AGREEMENT is made and entered into this ___ day of November, 2018, by and between the City of Farmington, a Michigan municipal corporation, hereinafter referred to as the "City," and Scott Freeman, hereinafter referred to as the "Contractor," both of whom understand as follows:

R E C I T A L S:

WHEREAS, City and Contractor entered into an Employment Agreement whereby City retained the services of Contractor as the General Manager of the Civic Theater, which such Agreement is dated _____, 2017.

WHEREAS, the City and Contractor wish to clarify that the duties of the General Manager include coordinating waste-hauling services in the area of the Civic Theater and other businesses in proximity to the City's "North Lot" public parking lot.

WHEREAS, currently the waste-hauling services are provided by a private company that charges a specified fee for such services that the General Manager collects from nearby businesses.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 3, Payment for Services, is hereby amended to include a new Paragraph C, which shall read as follows:

C. Coordination of Waste-Hauling Services. Contractor shall receive a one-time payment of \$1,312.50 as compensation for setting up services and \$125 per month for ongoing services related to the coordination of waste-hauling (trash collection) in the area of the Civic Theater and the City's North Parking Lot, to be paid from the amounts collected by the Contractor from local businesses in the proximity of the -Parking Lot.

IN WITNESS WHEREOF, the City of Farmington has caused this First Amendment to Farmington Civic Theater General Manager Agreement to be signed and executed on its behalf by its Mayor and City Clerk pursuant to authorization of the Farmington City Council, and Contractor has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF FARMINGTON

By: _____
STEVEN SCHNEEMANN, Mayor

By: _____
MARY MULLISON, Clerk

SCOTT FREEMAN