

# VI. Appendix



## VI. APPENDIX

### Annex A: Considerations for Market Rules

#### Product Mix

- \_\_\_ May a vendor sell food that he or she did not personally grow?
- \_\_\_ May a vendor sell candy or other prepackaged foods?
- \_\_\_ May a vendor sell soft drinks or bottled water?
- \_\_\_ May a vendor sell ready to eat food such as BBQ?
- \_\_\_ May a vendor sell dairy products or fresh meat?
- \_\_\_ Are there any foods that a vendor will be prohibited from selling at the market?
- \_\_\_ Are there any non-food products a vendor will be prohibited from selling (such as fireworks, clothing, household products)?
- \_\_\_ Will alcohol sales be allowed?
- \_\_\_ Will farm inspections be required as part of the process of meeting association goals?

#### Market Look and Feel

- \_\_\_ Should there be a vendor dress code?
- \_\_\_ What limitations will there be on the way vendor's stalls can look?
- \_\_\_ What kind of signs may a vendor have?
- \_\_\_ May a vendor have a TV or radio present on their premises?
- \_\_\_ May vendors bring pets and under what circumstances?

#### Limits on Participating Vendors

- \_\_\_ What geographic or other restrictions should there be on who can participate at the market?
- \_\_\_ Will vendors be required to be a member of the market association?

#### Market Operations

- \_\_\_ What is the shortest term on a stall lease a vendor can have?
- \_\_\_ How will vendors be allocated spots at the market?
- \_\_\_ Who can staff a vendor's stand (children, relatives, friends)?
- \_\_\_ How often may a vendor miss a market day? What penalties, if any, should apply?
- \_\_\_ May a vendor temporarily assign his/her spot if unable to make a particular day?
- \_\_\_ How early may a vendor arrive on a market day?
- \_\_\_ Must the vendor remain open throughout the market day?
- \_\_\_ What clean up obligations does a vendor have at the close of a market day?
- \_\_\_ What insurance should be required of a vendor?
- \_\_\_ Should vendors be required to post a bond?
- \_\_\_ Under what circumstances should a vendor be allowed to terminate his/her participation in a market season?

- \_\_\_\_\_ May a vendor sell or transfer his/her spot?
- \_\_\_\_\_ How will persons on a waiting list be addressed?
- \_\_\_\_\_ What procedures should be followed in resolving disputes with a vendor?
- \_\_\_\_\_ What rules will apply for the use of an association's trademarks and logos by a vendor?
- \_\_\_\_\_ Should the market restrict firearms?
- \_\_\_\_\_ Are the market's scales registered with the Texas Department of Agriculture?

**Fees**

- \_\_\_\_\_ Will vendors be responsible for a share of advertising costs or other fees?
- \_\_\_\_\_ What compensation should be paid to the market

## Annex B: Regulatory Checklist for Market Managers

### Market Certification Compliance

- \_\_\_\_\_ Submit application for renewal of Farmers' Market Certificate to Texas Department of Agriculture (annually in May)
- \_\_\_\_\_ File copy of any amended bylaws adopted by the association
- \_\_\_\_\_ File updated list of members of the association's governing board when changes occur
- \_\_\_\_\_ File updated list of association members (or vendors) who will be selling their own produce at the market when changes occur
- \_\_\_\_\_ File updated description of market's location, seasons, days and hours when changes occur

### Sales Tax Compliance

- \_\_\_\_\_ Obtain sales and use tax permit from Texas Comptroller of Public Accounts if the market association will be selling taxable items at the market on its own behalf
- \_\_\_\_\_ File sales tax returns as required by Texas Comptroller of Public Accounts and remit collected taxes

### FMNP Compliance

- \_\_\_\_\_ Provide copies of agreements with participating vendors to Texas Department of Health
- \_\_\_\_\_ Notify Texas Department of Health if any vendors accepting FMNP coupons leave the association

### Other Regulatory Compliance

- \_\_\_\_\_ Post signs before each market day prohibiting concealed weapons if banned under association rules
- \_\_\_\_\_ Ensure compliance with applicable zoning and local health and safety regulations

### Other

- \_\_\_\_\_ Obtain a copy of required permits from each vendor
- \_\_\_\_\_ Obtain a copy of each vendor's sales tax returns
- \_\_\_\_\_ Collect dues, fees and penalties (if any) from each vendor

## Annex C: Vendor Compliance Checklist

### Before Start of Each Market Season

- \_\_\_\_\_ Has the vendor submitted a signed application for the current market season?
- \_\_\_\_\_ Has the vendor provided proof of insurance (if required by association rules)?
- \_\_\_\_\_ Does the vendor have a valid sales and use tax permit (if selling taxable goods)?
- \_\_\_\_\_ Are the vendor's scales registered with the Texas Department of Agriculture?
- \_\_\_\_\_ Does the vendor have required health permits from the Texas Department of State Health Services or applicable city and county health agencies and/or public health departments (if applicable)?
- \_\_\_\_\_ Is each vendor who will be participating in the Farmers' Market Nutrition Program a member of the association as required by law?
- \_\_\_\_\_ Has each vendor who will be participating in the FMNP signed the contract required to accept FMNP coupons?

### Ongoing Compliance

- \_\_\_\_\_ Has the vendor obtained organic certification, or established that certification is not required, from the Texas Department of Agriculture if selling products labeled as organic?
- \_\_\_\_\_ Does the vendor have an egg dealer permit from the Texas Department of Agriculture if selling eggs not raised by him or her?
- \_\_\_\_\_ Does the vendor have a manufacturer's food license (if applicable)?
- \_\_\_\_\_ Does the vendor have an aquaculture permit from the Texas Department of Agriculture if he or she will be selling cultured seafood?
- \_\_\_\_\_ Does the vendor have a license from the Texas Alcoholic Beverage Commission permitting sale of the type of alcoholic beverages purposed to be sold (if applicable)?
- \_\_\_\_\_ Does the vendor have a nursery/floral license from the Texas Department of Agriculture if he or she will be selling flowers or plants?
- \_\_\_\_\_ Does the vendor have a vegetable seed license from the Texas Department of Agriculture if he or she will be selling vegetable seeds for planting?
- \_\_\_\_\_ Does the vendor have a perishable commodities license if selling Texas grown citrus fruits and vegetables?
- \_\_\_\_\_ Is the vendor in compliance with sales tax reporting requirements?
- \_\_\_\_\_ Is the vendor operating his premises in compliance with city, county and state health codes?

## Annex D: Model Association Rules and Regulations

### Market Rules and Regulations

The purpose and mission of the [Name of Market] is [to educate the community about local food resources and to revitalize low-income communities by creating a vibrant market at which local farmers and craftsman may showcase and sell their goods and products.]

By signing the market application and participating in the market, each Vendor agrees to comply with these rules and agrees and acknowledges that failure to comply may result in penalties, up to and including permanent expulsion from the market.

### Section 1: Definitions

1. “Association” means [Name of Market], the sponsor and operator of the Market.
2. “Permitted Items” means those categories of items on Schedule 1 to these rules.
3. “Vendor” means a person who has submitted an application to sell goods at the Market and who has been approved by the Market Manager.
4. “Market” means the farmers’ market operated by the Association at [Address].
5. “Market Manager” means the person elected by the board of directors of the Association as the chief administrator of the Market.

### Section 2: Market Manager Responsibility

1. The Market Manager is the Association’s agent and is responsible for management of all daily activities at the Market. Any comments, issues or complaints should be directed to the attention of the Market Manager at: [Address, Phone Number and E-mail Address].
2. The Market Manager’s responsibilities include:
  - assigning stalls to Vendors
  - collecting rents
  - conducting inspections of Vendor stalls
  - enforcing market rules and regulations
  - taking necessary steps to ensure Vendors and the Market’s compliance with applicable statutes and laws
  - acting as market ombudsman
3. Each Vendor must comply with the direction of, and the rules set by, the Market Manager in furtherance of these rules and regulations.

### Section 3: Vendor Responsibilities

1. Permits and Licenses. Each Vendor shall obtain, and furnish to the Market Manager, a current valid copy of any and all licenses and permits required for operation of the Vendor's business, which may include:
  - a sales and use tax permit
  - a retail food establishment permit
  - a food manufacturer's license
  - a perishable commodities license
  - a nursery/floral license
  - an egg reseller license
  - a weights and measures license

Any Vendor who fails to submit the required licenses/permits or who is not in compliance with the terms of such licenses/permits shall be denied selling privileges at the Market. If the Vendor becomes compliant within one-month after receiving notice from the Market Manager, then, at the discretion of the Market Manager after taking into account the past behavior of the Vendor and the reason that the Vendor failed to obtain the required permit, the Vendor may be reinstated. If the Vendor is not in compliance at the end of such period, the Vendor may be suspended for the market season.<sup>14</sup>

2. Items that May Be Sold. A Vendor may sell only those Permitted Items listed in the Vendor's application to participate in the Market. If a Vendor desires to sell items not included in the application, the Vendor must make a written request to the Market Manager, who has the sole discretion to approve or disapprove the request. The decision of the Market Manager will be provided to the Vendor in writing. All goods sold must be of marketable quality.<sup>15</sup>
3. Farm / Facility Inspections. All Vendors selling products produced on their own farm agree to, and will assist with, the inspection of their farms and other production facilities by the Market Manager and other representatives of the Market. Failure to comply with this requirement may result in suspension or expulsion from the Market. An inspection fee of \_\_\_ will be charged on farms or facilities that are inspected if a violation of the Market's rules is found.
4. Attendance. Vendors must be present each day the Market is open unless excused by the Market Manager. Vendors may not vacate the Market before the official closing time, unless sold out, or as may be allowed by the Market Manager. A Vendor who misses two or more days without a authorization or who leaves without authorization prior to closing time, unless sold out, may be suspended by the Market Manager.<sup>16</sup> Vendors must comply with Section 6 below when vacating the market for any reason.

5. Set Up. Vendors must sign in with the Market Manager upon arriving at the Market. Vendors must have their stalls completely set up and ready for the opening of the Market. The set up period is from \_\_\_\_\_ a.m. to \_\_\_\_\_ a.m. on the day of Market. If a Vendor is not set up at market opening, the Market Manager may suspend the Vendor's selling privileges for the day.<sup>17</sup>
6. Closing. All Vendors must vacate the Market not later than two hours after closing time. No Vendor shall leave the premises until the space occupied by him/her has been swept clean and placed in proper order. Upon vacating the Market for any reason, a Vendor must sign out with the Market Manager.
7. Compliance with Laws. Vendors shall comply with all applicable laws, ordinances and regulations. It is the Vendor's responsibility for knowing and taking all steps necessary to ensure such compliance.
8. Labeling and Packaging. All products offered for sale by a Vendor must be identified by a sign or label. All signage and labeling must be truthful and accurate. Any produce offered for sale in closed packages or sealed containers must bear a label stating the producer's or manufacturer's name and address, name of product, ingredients, net weight or measure and any other information required by law.
9. Organic Foods. No food shall be sold or represented to be organic unless it has been certified as organic by the Texas Department of Agriculture or another certifying body approved by the U.S. Department of Agriculture or otherwise is exempt from certification. All organic products offered for sale shall comply with the National Organic Standards established by the U.S. Department of Agriculture.
10. Insurance. Each Vendor must provide the Market Manager with proof of general liability insurance having a policy limit of not less than \$\_\_\_\_\_, covering the Vendor's activities at the Market. The policy must include the Association as named insured.
11. Sanitary Conditions. Vendors shall not permit litter to accumulate on the premises or create unsanitary conditions by leaving fruit or vegetable refuse or other garbage on the premises. Crates, boxes, baskets or other containers, paper or any other rubbish must be broken down/removed from the stall area and taken to the dumpster area designated by the Market Manager. All Vendors are responsible for clean up of any oil, grease, anti-freeze, etc., leaking from their vehicles.<sup>18</sup>
12. Display Areas. All Vendors are required to keep their merchandise within their allotted stall areas. This includes any merchandise awaiting customer pick-up. Vendors may not display any type of produce/merchandise in walk ways. Produce/merchandise must be displayed in a

safe and neat manner at all times. Displays must be designed so as not to block customers' view of other stalls. Signs may only be placed in the stall area and must have a professional appearance. Radios and TVs are not permitted in stall spaces without permission of the Market Manager.

13. Carriage. Produce/merchandise brought in/out of the Market by a Vendor must be hand carried or transported on small hand carts in a safe manner as directed by Market Manager. For safety reasons, no children are allowed to transport any produce or merchandise.
14. Animals. No animals other than service animals are permitted at the Market during market hours.
15. Parking. Vendors may only park in the location designated by the Market Manager. Motor vehicles may not be operated in the market area.<sup>19</sup>
16. Dress Code. All Vendors must be appropriately dressed in non-revealing attire. At a minimum, this includes a shirt, jeans or shorts, and shoes or sandals. Clothing shall not display graphic, lewd or offensive language, logos or images.
17. Literature. A Vendor may not distribute literature or other written materials at the Market, other than materials about the Vendor's products, without permission of the Market Manager.
18. Ethical Standards. Vendors must adhere to the highest standards of honesty and professionalism in conducting their businesses. Vendors must use reasonable efforts and act in good faith in attempting to resolve complaints with customers, other Vendors and/or the Association.
19. Employees and Agents. Each Vendor is responsible for ensuring that the Vendor's employees and agents comply with these rules and regulations.<sup>20</sup>

#### **Section 4: Market Season Days of Operation and Market Hours**

1. The term of the market season and market days and hours of operation for each season will be established by the Association and provided in writing to the Vendor by the Market Manager prior to the start of the season.
2. The Market Manager may direct that the Market be closed on a given day due to inclement weather or for public safety reasons. If the Market Manager determines that closure is appropriate, the Market Manager will make good faith efforts to contact Vendors and to post signs announcing the closure at the Market. Vendors assume sole responsibility for any losses associated with closure of the Market. Vendors are not entitled to credits or refunds for days that the Market is closed in accordance with this paragraph.<sup>21</sup>

**Section 5: Payment of Annual Stall Rental [and Financial Reporting]**

1. The annual fee for rental of a stall at the Market is \$ \_\_\_\_\_.<sup>22</sup>
2. One-third (1/3) of annual payment is due along with a Vendor's application to participate at the Market, an additional one-third of payment is due by \_\_\_\_\_ of the rental year and the final one-third of the payment is due by \_\_\_\_\_ of the rental year. Payments shall be made to the Market Manager and may be paid by cash or check.<sup>23</sup>
3. No person renting a stall at the Market shall sell, sublet or assign that stall to any other person or allow any other person to use the stall. Exchange of stalls for convenience of Vendors may be made, however, with the approval of the Market Manager.<sup>24</sup>
4. The Market Manager may authorize short term stall leases of less than a season if deemed appropriate by the Market Manager to fulfill the purpose of the Market.
5. Existing Vendors in good standing shall be given an exclusive period of time to apply to participate in subsequent market seasons before applications are accepted from the general public. Stall space will be allocated on a first-come, first-serve basis to the extent available under the Association's current product-mix plan. The Market Manager will make every effort to take into account a Vendor's preferences as to location. However, the Association reserves the right to allocate space in the manner determined by it as maximizing the goals of the Market.<sup>25</sup>
6. The Vendor must accurately report its gross sales to the Market Manager in writing at the end of each market season. If not reported, the Vendor will not be eligible to participate at future markets until the required information has been received.<sup>26</sup>

**Section 6: Advertising**

1. Any Vendor wishing to advertise shall do so at his/her own expense. Neither the Association, nor any Market Manager, employee, agent or representative of the Association shall be responsible for the cost of advertising incurred by any Vendor or group of Vendors.
2. Any advertisement or promotional materials using the Market's name and/or logos must be approved in advance in writing by the Market Manager.
3. By participating in the Market, each Vendor consents to the use by the Association (including the Market) of such Vendor's name, logo and other information in any print, Internet or other audio or visual media published or otherwise made available to third parties.

**Section 7: General Safety Rules and Regulations**

1. No smoking or use of other tobacco products is allowed on market premises.
2. No consumption of or sale of alcoholic beverages is permitted on market premises.
3. No firearms or other weapons are permitted on market premises.<sup>27</sup>
4. Space heaters and cooking devices may not be used at the Market unless approved by the Market Manager.
5. The Market Manager shall have the power and discretion to proscribe any other items or substances deemed by the Market Manager to constitute a danger to persons or property at the Market.

**Section 8: Non-Compliance and Penalties**

1. A Vendor may be fined, suspended or removed from the Market or have selling privileges in the Market conditioned or limited by the Market Manager for violations of the Market's rules, including:
  - Non-payment of rent
  - Refusing to comply with the rules governing the operation of the Market or interference with the Market Manager in carrying out the provisions of these rules
  - Use of abusive language (profane, racial, ethnic, etc.)
  - Conduct at the Market which demonstrates a deliberate attempt to cause poor morale or problems among Vendors or with the public
  - Consistent or repeated unsatisfactory customer service
  - Violations of community standards or a failure to obey or conform to state or local government regulations
2. The severity of any penalty or discipline shall be directly related to the gravity of the violation. The Market Manager will normally give prior warning of possible disciplinary action, but severe or repeated violations of Market rules may lead to immediate fines, suspensions or expulsion.<sup>28</sup>
3. Suspension shall occur upon delivery of written notice to Vendor.<sup>29</sup>
4. Vendors who are suspended will not receive any credit or refund for missed days.
5. In the event a Vendor is suspended, the Market Manager may lease the Vendor's stall to another Vendor for the duration of the suspension.

**Section 9: Grievance and Complaint Process**

1. A Vendor or Market customer may submit to the Market Manager, or if the Market Manager is believed to be part of the problem, to the Association's grievance committee,<sup>30</sup> a complaint against a Vendor (or the Market Manager) when there is reason to believe that a violation of laws or the Market's rules exist. [The identity of the complainant will not be revealed by the Market.]<sup>31</sup> Vendors are urged to submit a complaint whenever they witness a violation of the Market rules. The Market Manager (or the grievance committee, if appropriate) will conduct an initial investigation of any complaint. The investigation will include an attempt to obtain detailed information from the complainant, the alleged violator and other witnesses before a determination is made that a violation occurred.
2. A Vendor who is dissatisfied with any action or rule imposed or taken by the Market Manager may seek review of the action or rule by the Association's grievance committee by calling [Phone Number] or sending a written request to [Address and E-mail Address]. The Association will endeavor to resolve disputes as promptly as possible.
3. Decisions of the Association's grievance committee are final and binding.

## Annex E: Model Vendor Application

### [NAME OF YOUR MARKET] VENDOR APPLICATION

**Completed applications and deposits need to be returned by \_\_\_\_\_.** Applications received by \_\_\_\_\_ will be notified of their status by \_\_\_\_\_. Applications that arrive after \_\_\_\_\_ will be given consideration, if space allows. Full refunds of deposits will be given to any applicants who are not accepted. Call \_\_\_\_\_ or email \_\_\_\_\_ with questions or for more information.

**PLEASE PRINT**

Date: \_\_\_\_\_

Business/Farm Name: \_\_\_\_\_

Name of Seller: \_\_\_\_\_

Full names of family members (and relationship) who may sell for you: \_\_\_\_\_

Street address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Business phone: \_\_\_\_\_ Home phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Website: \_\_\_\_\_

Street address where items are grown or items are produced: \_\_\_\_\_

Taxpayer ID or Social Security number: \_\_\_\_\_

Are your items Texas grown or produced from Texas grown items?    yes     no

Do **you** grow or produce **all** your items?    yes     no

If not, please explain \_\_\_\_\_

Are any of your items organic or certified organic?    \_\_\_\_ organic    \_\_\_\_ certified organic

Are you selling any processed food items?    yes     no

What food and business related licenses and permits do you currently hold? These may include a manufacturer's food license, scale and balance permit, floral and nursery license, aquaculture license, organic certification and others. \_\_\_\_\_

*(A copy of these licenses and permits must be attached to this application.)*

Please list all items you intend to sell at the market. Items not listed may not be sold at the market without the prior written approval of the Market Manager. If your application is accepted, then we will inform you of which of your listed products may be sold. Add an additional page if necessary.

[NAME OF YOUR MARKET] **VENDOR APPLICATION** *(continued)*

# of stall spaces requested: \_\_\_\_\_ (each space measures \_\_\_\_ feet wide by \_\_\_\_ feet deep and includes [list furniture, power outlets, etc.]

**Please check each item to indicate your agreement:**

- I have read and agree to abide by all of the Association's Rules and Regulations.
- Upon acceptance, I agree to indemnify and hold the Association, the Market and their officers, directors, employees and agents harmless from and against any and all claims and demands, whether for injuries to persons, loss of life or damage to property, on or off the premises, arising out of the use or occupancy of the Market by me or my family, employees or agents and shall defend at my expense any actions brought against the Association, the Market and any of their officers, directors, employees or agents by the acts or omissions of me or my employees or agents.
- I have included all current licenses, permits and insurance policies as requested.
- I understand that all Vendors are required to carry appropriate liability insurance naming the Association and the Market as additional insureds. I have attached a copy of the certificate of insurance to this application.
- I am enclosing my deposit of \$\_\_\_\_\_ per stall space requested. If I am accepted as a
- Vendor, I understand that this deposit will be credited against the annual rental fee (make checks payable to \_\_\_\_\_). ***We will not consider your application until we have received your deposit.***
- I wish to join the Association and enclose my annual membership fee of \$\_\_\_\_\_.<sup>32</sup>
- I represent that all information provided in this application and that will be provided by me, or my authorized representatives, throughout the application process is true and correct in all respects. I understand and agree that if any of the information is false or inaccurate that the Association may reject my application and retain my application fee or that, if the false or inaccurate statement is discovered after my acceptance into the market, I may be expelled from the market and forfeit any fees paid to the Association.

***You must agree to all of the above items and indicate your agreement by checking each box, in order for your application to be considered.***

Signature of Seller or Authorized Representative: \_\_\_\_\_

Printed Name of Signing Person: \_\_\_\_\_

Title (if sole proprietor, please so indicate): \_\_\_\_\_

Date: \_\_\_\_\_

## Annex F: Vendor Permit Worksheet

### Permit and License Worksheet for Vendors

This worksheet is provided to help you determine what permits and licenses you may need in order to operate at the Market. Note, however, that this worksheet is designed only to provide you with general information. It is your responsibility to remain up to date on license and permit requirements and for verifying with regulatory authorities that you have all permits and licenses necessary for your particular business.

Please check all that apply:

\_\_\_\_\_ *I will be selling food products other than fresh, uncut vegetables.* If yes, contact your city or county health authority to see if you need a Retail Food Establishment Permit. If your city or county says no, contact the Texas Department of State Health Services at 512-719-0246 about state requirements.

\_\_\_\_\_ *I will be selling hot food, ready-to-eat meals or snacks (other than uncut fruits and vegetables), candy, soft drinks, tea and/or bottled water.* If yes, contact the Texas Comptroller of Public Accounts at 800-252-5555 about a Sales and Use Tax Permit.

\_\_\_\_\_ *I will be selling merchandise other than food.* If yes, contact the Texas Comptroller of Public Accounts at 800-252-5555 about a Sales and Use Tax Permit.

\_\_\_\_\_ *I will be describing some of my merchandise as “organic.”* Contact the Texas Department of Agriculture at 800-835-5832 about registering and/or obtaining certification to sell organic products.

\_\_\_\_\_ *I will be using scales at my stall at the Market.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Scale and Balance Permit.

\_\_\_\_\_ *I will be selling perishable fruits and vegetables not raised by me.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Perishable Commodities License.

\_\_\_\_\_ *I will be selling eggs not raised by me.* If yes, contact the Texas Department of Agriculture at 800-835-5832 for a Egg Dealer License.

\_\_\_\_\_ *I will be selling plants, nursery items and/or floral products.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Floral and Nursery License.

- \_\_\_\_\_ *I will be selling vegetable seeds.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about a Vegetable Seed License.
  
- \_\_\_\_\_ *I will be selling seafood.* If yes, contact the Texas Department of Agriculture at 800-835-5832 about an aquaculture license or fish farm vehicle license.
  
- \_\_\_\_\_ *I will be selling alcoholic beverages.* If yes, contact the Texas Alcoholic Beverage Commission at 512-206-3360 about obtaining beer and wine permits and contact city and county authorities about local restrictions and permits that may be required.

## Annex G: Form of Certificate of Formation

*The following form of Certificate of Formation should be reviewed by your legal counsel to determine whether any modifications are appropriate. This form assumes that you have selected to form a non-profit corporation and apply for tax exempt status under Section 501(c)(3) of the tax code. You should substitute your information for all [bracketed] provisions. All footnotes should be removed in the final version. Upon finalizing the Certificate of Formation, you should submit it to the Texas Secretary of State along with (1) the requisite fee, which was \$25 in 2006 and (2) an extra copy of the Certificate of Formation, which the Texas Secretary of State will file stamp and return to you as further evidence of filing. You will need the file stamped copy for your Section 501(c)(3) application. The Certificate of Formation may be submitted via mail (P.O. Box 13697, Austin, Texas 78711-3697), overnight delivery (James Earl Rudder Office Building, 1019 Brazos, Austin, Texas 78701) or via fax (512-463-5709). Fax submissions must be accompanied by a credit card payment (on Form 807) and are subject to an additional convenience fee.*

### CERTIFICATE OF FORMATION OF

[NAME OF FARMERS' MARKET]<sup>33</sup>

I, the undersigned natural person over the age of eighteen, acting as incorporator of a non-profit corporation under the Texas Business Organizations Code, adopt the following Certification of Formation of [Name of Farmers' Market] ("Certificate").

#### ARTICLE ONE NAME

The name of the corporation is [Name of Farmers' Market] (the "Corporation").

#### ARTICLE TWO NONPROFIT CORPORATION

The Corporation is a nonprofit corporation. When it dissolves, all of its assets will be distributed to the State of Texas or an organization exempt from taxes under Internal Revenue Code Section 501(c)(3)<sup>34</sup> for one or more purposes exempt under the Texas franchise tax.

#### ARTICLE THREE DURATION

The Corporation will continue in perpetuity.

#### **ARTICLE FOUR PURPOSES**

\_\_\_\_ Farmers' Market is not formed for pecuniary profit or gain and will perform activities that fall within the meaning of Internal Revenue Code Section 501(c)(3) and Texas Tax Code Section 11.18(c). The purposes for organizing the \_\_\_\_ Farmers' Market is to promote, encourage and support the growth of micro-enterprises and small farming enterprises in the \_\_\_\_ area through the operation of one or more farmers' markets, educate about local products, serve diverse populations, and participate in any other activities reasonably necessary to carry out such purposes.

#### **ARTICLE FIVE POWERS**

Except as this Certificate otherwise provides, the Corporation has all powers provided in the Chapter 22 of the Texas Business Organizations Code. Moreover, the Corporation has all implied powers necessary and proper to carry out its express powers. The Corporation may reasonably compensate its directors or officers for services rendered to or for the Corporation in furtherance of one or more of its purposes.

#### **ARTICLE SIX RESTRICTIONS AND REQUIREMENTS**

The Corporation may not pay dividends or other corporate income to its [members,] directors or officers or otherwise accrue distributable profits, or permit the realization of private gain.<sup>35</sup> The Corporation may not take any action prohibited by the Texas Business Organizations Code. The Corporation may not engage in any activities, except to an insubstantial degree, that do not further its purposes as set forth in this Certificate.

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings and procedures. Nor may it take any action that would be inconsistent with the requirements for receiving tax-deductible charitable contributions under Internal Revenue Code Section 170(c)(2) and related regulations, rulings and procedures. Regardless of any other provision of this Certificate or state law, the Corporation may not:

- (1) Engage in activities or use its assets in manners that do not further one or more exempt purposes, as set forth in this Certificate and defined by the Internal Revenue Code and related regulations, rulings and procedures, except to an insubstantial degree.
- (2) Serve a private interest other than one clearly incidental to an overriding public interest.

- (3) Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings and procedures.
- (4) Participate in or intervene in any political campaign on behalf of any candidate for public office. The prohibited activities include publishing or distributing statements and any other direct or indirect campaign activities.
- (5) Have objectives characterizing it as an “action organization” as defined by the Internal Revenue Code and related regulations, rulings and procedures.
- (6) Distribute its assets on dissolution other than for one or more exempt purposes. Upon dissolution, the Corporation’s assets will be distributed for one or more exempt purposes within the meaning of Internal Revenue Code Section 501(c)(3) or shall to distributed to the federal government, or to a state or local government, for a public purpose.
- (7) Permit any part of the Corporation’s net earnings to inure to the benefit of any private shareholder or member of the Corporation or any private individual.
- (8) Carry on an unrelated trade or business, except as a secondary purpose related to the Corporation’s primary, exempt purposes.

In addition, in the event that this Corporation shall become a “private foundation” within the meaning of the Internal Revenue Code Section 509, the Corporation shall distribute its income at such times and in such manners as to avoid tax for undistributed income under Internal Revenue Code Section 509, or corresponding provisions of any subsequent federal tax laws. The Corporation shall not:

- (1) Engage in any act of self-dealing as defined in Internal Revenue Code Section 4941(d), or corresponding provisions of any subsequent federal tax laws.
- (2) Retain excess business holdings as defined in Internal Revenue Code Section 4943(c), or corresponding provisions of any subsequent federal tax laws.
- (3) Make any investments in such a manner as to subject it to tax under Internal Revenue Code Section 4944, or corresponding provisions of any subsequent federal tax laws.
- (4) Make any taxable expenditure as defined in Internal Revenue Code Section 4945(e), or corresponding provisions of any subsequent federal tax laws.

**ARTICLE SEVEN**  
**INITIAL REGISTERED OFFICE AND AGENT**

The street address of the Corporation's initial registered office is [Address].<sup>36</sup> The name of the initial registered agent at this address is [Name].<sup>37</sup>

**ARTICLE EIGHT**  
**MEMBERSHIP**

[The Corporation will have no members.] [The Corporation may have one or more classes of Members as specified in the bylaws. The bylaws will provide the qualifications, manner of selection, duties, terms and other matters relating to the Members.]

**ARTICLE NINE**  
**MANAGEMENT OF THE CORPORATION**

The management of the corporation is vested in its Board of Directors.<sup>38</sup> The bylaws will provide the qualifications, manner of selection, duties, terms and other matters relating to the Board of Directors.

The initial board will consist of three persons.<sup>39</sup> The initial board will consist of the following persons at the following addresses:

<u>Name</u>	<u>Address</u>
-------------	----------------

The number of directors may be increased or decreased by adopting or amending bylaws. The number of directors may not be decreased to fewer than three.

**ARTICLE TEN**  
**LIMITATION ON LIABILITY OF DIRECTORS**

To the fullest extent allowed by law, a director of the Corporation is not liable to the Corporation for monetary damages for an act or omission in the director's capacity as director.

**ARTICLE ELEVEN**  
**INDEMNIFICATION**<sup>40</sup>

The Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors of the Corporation. The right to indemnification conferred by this Article Eleven shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition. The Corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article Eleven to directors and officers of the Corporation.

The rights to indemnification and to the advance of expenses conferred in this Article Eleven shall not be exclusive of any other right which any person may have or hereafter acquire under this Certificate, the Bylaws of the Corporation, any statute, agreement, vote of disinterested directors or otherwise.

Any repeal or modification of this Article Eleven or any indemnification provisions of the bylaws shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

**ARTICLE TWELVE**  
**CONSTRUCTION**

All references in this Certificate to statutes, regulations or other sources of legal authority refer to the authorities cited, or their successors, as they may be amended from time to time.

**ARTICLE THIRTEEN  
SOLE INCORPORATOR**

The name and street address of the sole incorporator<sup>41</sup> is:

**Name**

**Address**

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, I execute this Certificate of Formation on [Date].

\_\_\_\_\_  
[Name]

Sole Incorporator

## Annex H: Form of Bylaws

*The following form of Bylaws should be reviewed by the organizer's legal counsel to determine whether any modifications are appropriate. The Bylaws should not be filed with the Texas Secretary of State. You should substitute your information for all [bracketed] provisions. All footnotes should be removed in the final version.*

### BYLAWS<sup>42</sup> OF

[NAME OF FARMERS' MARKET]

These bylaws ("Bylaws") govern the affairs of [Name of Farmers' Market], a nonprofit corporation organized under the laws of the State of Texas (the "Corporation").

#### Statement of Market Purpose and Philosophy

Farmers' markets are typically created to serve the needs of local farmers and consumers.

#### Examples:

##### A. Dane County – Madison, Wisconsin –

- To give growers and producers of Wisconsin agricultural commodities and other farm-related products alternative marketing opportunities;
- To promote the sale of Wisconsin-grown farm products;
- To improve the variety, freshness, taste and nutritional value of produce available in the Madison area;
- To provide an opportunity for farmers and people from urban communities to deal directly with each other, rather than through third parties, and to thereby get to know and learn from one another;
- To provide an educational forum for consumers to learn the uses and benefits of quality, locally grown or prepared food products;
- To provide educational opportunities for producers to test and refine their products and marketing skills;
- To enhance the quality of life in the Greater Madison Area by providing a community activity which fosters social gathering and interaction; and
- To preserve Wisconsin's unique agricultural heritage and the historical role which farmers' markets have played in it.

- B. Washington D.C. – Dupont Circle – The FRESHFARM Markets at Dupont Circle in Washington, D.C. and St. Michaels, Maryland are public education projects and were created as a showcase for regional food drawn from the farms, fields and waters of the Mid-Atlantic region. They were created to demonstrate that there is a direct connection between eating seasonally and locally and the quality of our environment and our daily lives. The market addresses farm economics by providing regional farmers/producers with a direct market for their products and enhances the quality of life in the community by providing residents with direct access to farmers and their farm fresh products. The market provides an opportunity for educating both the farmers/producers and market customers about the connection between preserving local agriculture and buying fresh, seasonal products direct from the farm.
- C. San Francisco – Ferry Plaza Farmers’ Market (FPFM) - The Ferry Plaza Farmers’ Market (FPFM) is a certified farmers’ market operated by the Center for Urban Education About Sustainable Agriculture (CUESA) in accordance with state, county, and local laws, for the benefit of farmers and consumers alike. Its fundamental purpose is to provide the community with a place to buy fresh produce direct from producers in a congenial atmosphere and to provide producers with a direct market for their goods. Further objectives derived from CUESA’s mission include education about and support of regional sustainable agriculture. Sustainable agriculture is a commitment to both growing and distributing foods to meet the needs of current and future generations in a manner that is environmentally sound, economically viable, and socially just. CUESA believes that small family farms are essential to the sustainable agricultural economy, and is committed to making economic and educational connections between urban dwellers and sustainable farmers.

## ARTICLE ONE OFFICES [AND MEMBERS]

### 1.01 **Principal Office**

The Corporation’s principal office in Texas will be located at [Address].<sup>43</sup> The Corporation may have such other offices, in Texas or elsewhere, as the Board of Directors of the Corporation (the “Board”) may determine. The Board may change the location of any office of the Corporation.

### 1.02 **Registered Office and Registered Agent**

The Corporation will maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation’s principal office in Texas. The Board may change the registered office and the registered agent as permitted by the Texas Business Organizations Code.

### **1.03 Members**

The Corporation shall have one class of Members. The Members shall have no voting rights or any other authority to elect directors or officers, or to direct the control, of the Corporation. Each person properly admitted as a “vendor” to the Market in accordance with such rules as shall be established by the Board from time to time shall be a Member of the Corporation. Membership shall automatically expire at such time as such person ceases to be a vendor of the market, whether due to expulsion, the passage of time or otherwise.

### **1.04 Annual Meeting of Members**

The Corporation shall hold an annual meeting of the Members at such place and at such time as set by the Board. The purpose of the meeting shall be to generally advise the Members as to the state of the Corporation, including with respect to any rule changes and financial status and to address any questions of the Members.]<sup>44</sup>

## **ARTICLE TWO BOARD OF DIRECTORS**

### **2.01 Management of Corporation**

The Board will manage corporate affairs.

### **2.02 Number, Qualifications and Tenure of Directors**

The number of members of the Board (collectively, the “Directors”, and each, a “Director”) may be fixed by resolution of the Board, though initially the number of Directors will be [three].<sup>45</sup> Directors need not be Texas residents. Directors shall be comprised of at least two Market vendors. Each Director shall hold office until the next annual meeting of the Board or until his or her successor shall have been duly elected and qualified.

### **2.03 Nominating Directors**

At any meeting at which the election of a Director is held, any Director may nominate any person other than himself or herself to serve as a Director.

### **2.04 Electing Directors**

A person who meets the qualification for Director and who has been duly nominated may be elected as a Director. Directors will be elected by the vote of the Board. Director may be elected to succeed himself or herself as a Director.

### **2.05 Vacancies**

The Board will fill any vacancy in the Board and any Director position to be filled due to an increase in the number of Directors. A vacancy is filled only by the affirmative vote of all remaining Directors, even if it is less than a quorum of the Board, or if there is only a sole remaining Director. A Director elected to fill a vacancy will serve for the remainder of the unexpired term of his or her predecessor in office.

### **2.06 Regular Meetings**

The Board may provide for regular Board meetings by resolution stating the time and place of such meetings. The meetings may be held inside or outside Texas,<sup>46</sup> and will be held at the Corporation's registered office in Texas if the resolution does not specify the location of the meetings. No notice of regular Board meetings is required other than a Board resolution stating the time and place of the meetings.<sup>47</sup>

### **2.07 Special Meetings**

Special meetings of the Board may be called by, or at the request of, the president or any Director. A person authorized to call special meetings of the Board may fix any place within or without Texas<sup>48</sup> as the place for holding a special meeting; provided that such person fixes a place for holding a special meeting that allows all other Directors to participate by teleconference if such other Directors desire. The person calling a special meeting will inform the Secretary of the Corporation of the information to be included in the notice of the special meeting. The Secretary of the Corporation will give notice to all of the Directors as these Bylaws require.

### **2.08 Notice**

Notice of any special meeting of the Board will be delivered to each Director not less than [five]<sup>49</sup> days before the date of the meeting if notice is sent by mail and not less than [two] days before the date of the meeting if the notice is given by facsimile, telephone or e-mail, or, in either case, on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances. The notice will state the place, day and time of the meeting; who called it; the purpose or purposes for which it is called; and instructions for participating by teleconference. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

### **2.09 Quorum**

A majority of the Directors constitute a quorum for transacting business at any Board meeting. If a quorum is never present at any time during a meeting, any Director present may adjourn and reconvene the meeting once without further notice.

### **2.10 Actions of Board of Directors**

The affirmative vote of a majority of the Directors present and voting at a meeting at which a quorum is present shall constitute the act of the Board, unless the act of a greater number is required by law or some other provision of these Bylaws. A Director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the Board's decision. For the purpose of determining the decision of the Board, a Director who is represented by proxy in a vote is considered present.

### **2.11 Proxies**

Any Director may vote by proxy executed in writing or electronically signed (including via e-mail) by that Director and delivered to the Chairman of the Board and/or the Secretary prior to the commencement of any meeting of the Board; provided that no proxy shall be valid after three months from the date of its execution; and provided further that each proxy shall be revocable unless expressly provided therein to be irrevocable and unless otherwise made irrevocable by law. A person authorized to exercise a proxy may not exercise the proxy unless it is delivered to the officer presiding at the meeting before the business of the meeting begins. The Secretary or other person taking the minutes of the meeting will record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy will not be effective for that meeting. A proxy filed with the Secretary of the Corporation or other designated officer remains in force until the earliest to occur of the following:

- (1) an instrument revoking the proxy is delivered to the secretary or other designated officer;
- (2) the proxy authority expires under the proxy's terms; and
- (3) the proxy authority expires under the terms of these Bylaws.

### **2.12 Compensation**

Directors as such shall not receive any stated salaries for their services but nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity and receiving compensation therefor. [Furthermore, the Board may adopt a resolution providing for the Corporation to reimburse Directors their reasonable out-of-pocket expenses, if any, incurred for attending Board meetings.]<sup>50</sup>

### **2.13 Removing Directors**

Any Director may be removed from the Board by a majority vote of the remaining Board members after non-performance of her/his designated duties and responsibilities.

### **2.14 Directors Not Trustees**

Directors are not deemed to have the duties of trustees of a trust with respect to the Corporation or with respect to any property held or administered by the Corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

### **2.15 Committees**

The Board by resolution adopted by a majority of the Directors may designate and appoint one or more standing committees each of which shall consist of one or more Directors, which committees, to the extent provided in said resolution shall have and exercise the authority of the Board in the management of the Corporation. However, no such committee shall have the authority of the Board in

reference to amending, altering or repealing the Bylaws; electing, appointing or removing any member of any such committee or any Director or officer of the corporation; amending the Certificate of Formation; adopting a plan of merger or adopting a plan of consolidation with another entity; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation; authorizing the voluntary dissolution of the Corporation or revoking proceedings therefor; adopting a loan for the distribution of the assets of the Corporation; or amending, altering or repealing any resolution of the Board that by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board or any individual Director of any responsibility imposed on it by her/him by law.

### **2.16 Interested Directors**

Contracts or transactions between Directors or officers and the Corporation are not void or voidable for any of the following reasons: (a) solely because the contract or transaction is between the officer or Director and the Corporation, (b) solely because the officer or Director is present at or participates in the meeting that authorizes the contract or transaction or (c) solely because the interested party's votes are counted for that purpose. However, every Director with any personal interest in the contract or transaction must disclose all material facts concerning the contract or transaction, including all potential personal benefit and potential conflicts of interest, to the other members of the Board or other group authorizing the contract or transaction. The contract or transaction must be approved by all uninterested Directors or uninterested members of such other group with the authority to approve the contract or transaction.

### **2.17 Action by Written Consent**

In accordance with these Bylaws, action may be taken without a meeting when there are signed written consents by the number of Directors whose votes would be necessary to take action at a meeting at which all such Directors entitled to vote were present and voted. Each written consent must be signed and bear the date of signature of the person signing it. A facsimile or similar transmission by a Director, or a photographic, facsimile or similar reproduction of a signed writing, will be treated as an original being signed by the Director.

Consents must be delivered to the Corporation. A consent signed by fewer than all Directors is not effective to take the intended action unless the required number of consents are delivered to the Corporation within 60 days after the date that the earliest-dated consent was delivered to the Corporation. Delivery must be made by hand or by certified or registered mail, return receipt requested. The delivery may be made to the Corporation's registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent having custody of books in which the relevant proceedings are recorded. If the delivery is made to the Corporation's principal place of business, the consent must be addressed to the president or principal executive officer. The Corporation will give prompt notice of the action taken to persons who do not sign consents.

### **2.18 Meetings Conference Telephone or Remote Communication Technology**

Unless otherwise provided in the Certificate of Formation, members of the Board, or any committee thereof, may participate in and hold a meeting of the Board such committee by means of:

- (a) conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other; or
- (b) another suitable electronic communications system, including videoconferencing technology or the Internet, only if:
  - (i) each Director entitled to participate in the meeting consents to the meeting being held by means of that system; and
  - (ii) the system provides access to the meeting in a manner or using a method by which each Director participating in the meeting can communicate concurrently with each other participant.

Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting, except where a Director participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE THREE**

### **OFFICERS**

#### **3.01 Officer Positions**

The Corporation's officers will be a President, Market Manager and a Secretary.<sup>51</sup> The Board may create additional officer positions, define the authority and duties of each such person and elect or appoint persons to fill the positions. The same person may hold any two or more offices, except for president and secretary.

#### **3.02 Election and Term of Office**

The Corporation's officers will be appointed annually by the Board at the annual Board meeting. If officers are not appointed at this time, they will be appointed as soon thereafter as possible. Each officer will hold office until a successor is duly selected and qualifies. An officer may be elected to succeed himself or herself in the same office.

#### **3.03 Removal**

Any officer appointed by the Board may be removed by the Board with or without good cause. Removing any officer will be without prejudice to the officer's contractual rights, if any.

**3.04 Vacancies**

The Board may select a person to fill a vacancy in any office for the unexpired portion of the officer's term.

**3.05 President**

The President is the Corporation's chief executive officer. He or she will supervise and control all of the Corporation's business and affairs and will preside at all meetings of the Board. The President may execute any deeds, mortgages, bonds, contracts or other instruments that the Board authorizes to be executed. However, the President may not execute instruments on the Corporation's behalf if this power is expressly delegated to another officer or agent of the Corporation by the Board, these Bylaws or statute. The President will perform other duties prescribed by the Board and all duties incident to the office of president.

**3.06 Market Manager<sup>52</sup>**

The Market Manager shall administer the market and oversee its operating rules and regulations. The Market Manager will report to the President and the Board. The Market Manager will perform other duties as from time to time may be assigned to him/her by the President or the Board and all duties incident to the office of the Market Manager.

**3.06 Secretary**

The Secretary will (a) give all notices as provided in these Bylaws and the Certificate of Formation or as required by law; (b) take minutes of meetings of the Board and keep the minutes as part of the corporate records; (c) maintain custody of the corporate records and seal; (d) affix the corporate seal to all documents as authorized; (e) keep a register of each Director, officer and employee of the Corporation; (f) perform duties as assigned by the President or the Board; and (g) perform all duties incident to the office of Secretary.

## **ARTICLE FOUR**

### **TRANSACTIONS OF THE CORPORATION**

**4.01 Contracts**

The Board may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of, and on behalf of, the Corporation. This authority may be limited to a specific contract or instrument or it may be extended to any number and type of possible contracts and instruments.

**4.02 Deposits**

All of the Corporation's funds will be deposited to the credit of the Corporation in banks, trust companies or other depositories that the Board selects.

#### 4.03 Gifts

The Board may accept, on the Corporation's behalf, any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation. The Board may take gifts and give charitable contributions not prohibited by these Bylaws, the Certificate of Formation, state law or provisions set out in federal tax law that must be complied with to maintain the Corporation's federal and state tax status.

#### 4.04 Conflicts of Interest

**A. Financial Interests.** Each Director, Officer, and committee member shall fully disclose any and all financial interests involving themselves or one of their family members in regard to any matter that is presented to the Board or a committee for a vote and shall abstain from voting on such matters. The term "family member" as used herein includes: parents, in-laws, children, siblings, spouses, aunts, uncles, nieces, and nephews. "Financial interests" include, but are not limited to:

1. A payment of dividends or loan of the money of the Corporation to a director. Directors who allow the making of a loan to a con-director will be personally liable for the full amount of the loan until it is repaid;
2. An ownership, investment interest, or compensation arrangement with any entity with which the Corporation has a transaction or arrangement;
3. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement;
4. A potential ownership, investment interest, or compensation arrangement with any entity or individual with which the Corporation is negotiating a transaction or arrangement, including a commission or fee, share of the proceeds, the prospect of promotion or profit, or any other form of financial reward.

#### **B. Additional Prohibited Acts**

As long as the Corporation exists, and except with the Board's prior approval, no Director or officer of the Corporation may:

1. Do any act in violation of the Certificate of Formation, these Bylaws or a binding obligation of the Corporation;
2. Do any act with the intention of harming the Corporation or any of its operations;
3. Do any act that would make it impossible or unnecessarily difficult to carry on the Corporation's intended or ordinary business;

4. Receive an improper personal benefit from the operation of the Corporation;
5. Use the Corporation's assets, directly or indirectly, for any purpose other than carrying on the Corporation's business;
6. Wrongfully transfer or dispose of Corporation property, including intangible property such as goodwill;
7. Use the Corporation's name (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of its business; or
8. Disclose any of the Corporation's business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.

**C. Duty to Disclose.** In connection with the actual or potential conflict of interest, an interested person must disclose the existence of his financial interests and all material facts to the Directors and members of committees with board-delegated powers considering the proposed transaction or arrangement.

**D. Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested party, the interested party shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

**E. Procedures for Addressing the Conflict of Interest**

1. An interested person may make a presentation at the board or committee meeting, but after such presentation, he shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
2. The President or Chair of a committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or

arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation. The Corporation shall make its decision as to whether to enter into transaction or arrangement in conformity with such determination.

#### **F. Violations of the Conflict of Interest Policy**

1. If the board of committee has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
2. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the board or committee determines that the person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **4.06 Permitted Acts**

A Director or officer of the Corporation may lend money to, and otherwise transact business with, the Corporation except as otherwise provided by these Bylaws, the certificate of formation and applicable law. Such a person transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation.

### **ARTICLE FIVE BOOKS AND RECORDS**

#### **5.01 Required Books and Records**

The Corporation shall keep correct and complete books and records of account, records of attendance and minutes of the proceedings of the Board and committees having any of the authority of the Board, a record at the registered or principal office giving the names and addresses of each Director and such other records as required by law.

#### **5.02 Inspection and Copying**

Any Director or officer of the Corporation may inspect and receive copies of all the corporate books and records required to be kept under these Bylaws. Such a person may, by written request, inspect or receive copies if he or she has a proper purpose related to his or her interest in the Corporation. He or she may do so through his or her attorney or other duly authorized representative. The inspection may take place at a reasonable time, no later than five working days after the Corporation receives a proper written request. The Board may establish reasonable copying fees, which may cover the cost of materials and labor but may not exceed thirty cents per page. The Corporation will provide requested copies no later than five business days after the Corporation receives a proper written request.

## **ARTICLE SIX FISCAL YEAR**

### **6.01 Fiscal Year<sup>53</sup>**

The Corporation's fiscal year will begin on the first day of January and end on the last day of December.

## **ARTICLE SEVEN INDEMNIFICATION**

### **7.01 Indemnification of Officers and Directors**

Each Director or officer, whether or not then in office, and, upon approval of a majority of the Board, each employee or agent of the Corporation, whether or not then an employee or agent, in each case subject always to the provisions of the laws of the State of Texas and the certificate of formation, shall be indemnified by the Corporation against all costs and expenses (including counsel fees) reasonably incurred by or imposed upon him or her in connection with or arising out of any action, suit or proceeding which he or she may be for any reason involved by reason of his or her being or having been a Director, officer, employee or agent of the Corporation, such expense to include the cost of any settlements which has been approved by the Board (other than amounts to be paid to the Corporation itself), made with the view to curtailment of costs of litigation. The Corporation shall not, however, indemnify any Director, officer, employee or agent with respect to matters as to which he or she shall be finally adjudged in any such action, suit or proceeding, to be liable for gross negligence or willful misconduct in the performance of his or her duties in such position, nor in respect of any matter on which any settlement or compromise is effected, if the total expense, including the cost of such settlement shall substantially exceed expense which might reasonably be incurred by such Director, officer, employee or agent conducting such litigation with final conclusion. The foregoing right of indemnification shall not be exclusive of other rights to which any such person shall be entitled as a matter of law. Except as provided in the certificate of formation, provisions of this section shall not be modified or repealed except by affirmative vote of a majority<sup>54</sup> of the Board.

## **ARTICLE EIGHT NOTICES**

### **8.01 Notice**

Any notice required or permitted by these Bylaws to be given to a Director or officer of the Corporation may be given by written notice delivered personally or sent by mail, nationally recognized overnight courier, e-mail or facsimile to each Director at her/his address, e-mail address or facsimile number as shown by the records of the Corporation. Notice shall be deemed to be delivered:

- (a) if mailed, when deposited in the United States mail so addressed with postage thereon prepaid;
- (b) if sent by nationally recognized overnight courier, when delivered with written verification of

receipt, (c) if sent via e-mail, when sent via e-mail without receipt of a delivery error by the sender and (d) if sent by facsimile, when confirmation of receipt is received by transmitting party. Any Director may at any time waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

## **ARTICLE NINE**

### **CERTIFICATION BY TEXAS DEPARTMENT OF AGRICULTURE**

#### **9.01 Certified Farmers' Market**

As required pursuant to the rules of the Texas Department of Agriculture in order for the Corporation to qualify as a "certified farmers' market":<sup>55</sup>

- (1) at least \_\_\_\_% of all agricultural products sold through the markets maintained by the Corporation shall be grown in Texas<sup>56</sup>;
- (2) no less than two of the [vendors]/[Members] of the Corporation's markets shall be farmers' selling their own produce; and<sup>57</sup>
- (3) all agricultural products sold at the market shall be of merchantable quality; and
- (4) the Corporation shall take, and the Board shall cause the Corporation to take, all such other actions as the Board may determine as being reasonably necessary to for the markets operated by the Corporation become, and to maintain their status as, "certified farmers' markets" by the Texas Department of Agriculture.

## **ARTICLE TEN**

### **AMENDING BYLAWS**

#### **10.01 Amending Bylaws**

These Bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board. The notice of any meeting at which these Bylaws are altered, amended or repealed, or at which new bylaws are adopted, will include the text of the proposed bylaw provisions as well as the text of any existing provisions proposed to be altered, amended or repealed. Alternatively, the notice may include a fair summary of those provisions.

**ARTICLE ELEVEN**  
**MISCELLANEOUS PROVISIONS**

**11.01 Legal Authorities Governing Construction of Bylaws**

These Bylaws will be construed under Texas law. All references in these Bylaws to statutes, regulations or other sources of legal authority will refer to the authorities cited, or their successors, as they may be amended from time to time.

**11.02 Legal Construction**

To the greatest extent possible, these Bylaws shall be construed to conform to all legal requirements and all requirements for obtaining and maintaining all tax exemptions that may be available to non-profit corporations. If any provision of these Bylaws is held invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability will not affect any other provision, and these Bylaws will be construed as if they had not included the invalid, illegal or unenforceable provision.

**11.03 Headings**

The headings used in these Bylaws are for convenience and may not be considered in construing these Bylaws.

**11.04 Number**

All singular words include the plural and all plural words include the singular.

**11.05 Seal**

The Board may provide for a corporate seal. Such a seal would consist of two concentric circles containing the words “[Name of Corporation]”; “Texas” in one circle and the word “Formed” together with the date of formation in the other circle.<sup>58</sup>

**11.06 Power of Attorney**

A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the secretary to be kept with the corporate records.

**11.07 Parties Bound**

These Bylaws will bind and inure to the benefit of the Directors, officers, employees and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns except as these Bylaws otherwise provide.

[CERTIFICATION PAGE FOLLOWS]

### CERTIFICATION

I certify that I am the duly elected and acting secretary of [Name of Corporation] and that these Bylaws constitute the Corporation's bylaws. These Bylaws were duly adopted at a meeting of the Board of Directors held on [Date].

Dated: [Date]

---

Name:

Title: Secretary

## Annex I: Form of Initial Resolutions of the Board of Directors

ACTION BY WRITTEN CONSENT

OF

THE BOARD OF DIRECTORS

OF

[NAME OF CORPORATION]

The undersigned, being all the members of the Board of Directors (the “Board”) of [Name of Corporation], a Texas non-profit corporation (the “Corporation”), acting pursuant to Sections 6.201(b) and 22.220(b) of the Texas Business Organizations Code (the “TBOC”), do hereby consent to the adoption of, and do hereby adopt, by this written consent, the following resolutions with the same force and effect as if they had been approved and adopted at a duly convened meeting of the Board and direct that this written consent be filed with the minutes of the proceedings of the Board:

### ***Incorporation***

NOW, THEREFORE, BE IT RESOLVED that all actions taken by [Name], the organizer of the Corporation, in connection with the formation of the Corporation, including, without limitation, the filing with the Secretary of State of the State of Texas the Certificate of Formation (the “Certificate of Formation”) of the Corporation, a copy of which is attached hereto as Exhibit A, be, and hereby are, in all respects ratified, affirmed and approved; and the Secretary of the Corporation is hereby directed to insert, or cause to be inserted, a certified copy of the Certificate of Formation in the minutes of the Corporation; and

FURTHER RESOLVED that the Bylaws attached hereto as Exhibit B be, and they hereby are, approved and adopted in all respects as the Bylaws of this Corporation; and

FURTHER RESOLVED that the following persons be, and they hereby are, elected to the offices of the Corporation set forth opposite their respective names, to serve in accordance with the Bylaws of the Corporation and at the discretion of the Board of Directors:

Name Office<sup>59</sup>

[Name]President

[Name][Market Manager]

[Name]Secretary; and

[FURTHER RESOLVED that the proposed corporate seal, an impression of which is affixed to this page in the margin opposite this resolution, be, and it hereby is, adopted as the corporate seal of the Corporation; and]<sup>60</sup>

FURTHER RESOLVED that the Secretary of the Corporation be, and he<sup>61</sup> hereby is, authorized and directed to procure all corporate books, books of account and shareholder records required by the TBOC and the laws of the State of Texas or necessary or appropriate in connection with the business of the Corporation; and

FURTHER RESOLVED that the President<sup>62</sup> of the Corporation be, and he hereby is, authorized to pay all charges and expenses incident to or arising out of the organization of the Corporation and to reimburse any person who has made any disbursements therefor; and

FURTHER RESOLVED that each of the above-named officers, and any other duly appointed officer of the Corporation,<sup>63</sup> and each of their respective successors in office be, and each of them hereby is, authorized and empowered in the name and on behalf of the Corporation, to take such actions as any of them may determine with respect to bank accounts of the Corporation, including, but not limited to: (1) the opening and closing of such accounts; (2) the deposit into and withdrawal of funds from such accounts; (3) the authorization of manual or facsimile signatories for such accounts; (4) the modification of agreements relating to such accounts (whether such accounts now or hereafter exist); (5) the wire-transfer of funds from such accounts; and (6) the issuance of instructions respecting such accounts; and

#### ***Adoption of Market Rules***

WHEREAS, the Corporation will organize and operate a farmers' market (the "Market"), the Board deems it advisable and in the best interests of the Corporation to set forth the rules pursuant to which the market will be operated;

WHEREAS, persons desiring to participate in the Market as vendors must apply and meet certain qualifications in order to be accepted as vendors in the Market;

NOW, THEREFORE, BE IT RESOLVED that the rules set forth in Exhibit C hereto are hereby adopted as the initial rules of the Market and all officers shall operate, or cause the Market to be operated, in accordance with such rules; and

FURTHER RESOLVED that the form of application set forth in Exhibit D hereto is hereby adopted and the [President and Market Manager] is authorized and directed to determine which applicants are accepted as vendors;

***[Determination of Members***

FURTHER RESOLVED that any persons accepted as vendors to the Market in accordance with the rules and procedures provided by this Board shall each be a Member of the Corporation as set forth in Section 1.3 of the Bylaws for so long as such person remains a vendor of the Corporation.]<sup>64</sup>

***[Lease Agreement***

WHEREAS, the Board deems it advisable and in the best interests of the Corporation to enter into the proposed [Lease] between the Corporation and [Third Party] (the “Agreement”), pursuant to which the Corporation will be lease certain real property upon which the Market will be located;

WHEREAS, the Board wishes to approve the Agreement and the transactions contemplated thereby;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby authorizes, approves and adopts the Agreement and the consummation of the transactions contemplated by the Agreement, substantially on the terms and subject to the conditions set forth in the Agreement in the form previously provided to the Board and on such other terms as the officers of the Corporation shall deem necessary, appropriate or advisable; and

FURTHER RESOLVED that the Board hereby authorizes and directs the officers of the Corporation to take all such action as any such officer shall deem necessary, appropriate or advisable to consummate the transactions contemplated by the Agreement on the terms hereby approved; and

FURTHER RESOLVED that the officers of the Corporation be, and each of them hereby is, authorized and directed to execute and deliver, in the name and on behalf of the Corporation, the Agreement, with such changes therein as the officer executing the same shall approve, such approval to be conclusively established by his execution thereof.]<sup>65</sup>

***Authorization of Filings***

WHEREAS, the Board deems it advisable and in the best interests of the Corporation for the Market to become a “certified farmers’ market” under Texas law;

WHEREAS, the Corporation has been organized as a non-profit corporation under Texas law;

WHEREAS, the Board deems it advisable and in the best interests of the Corporation for the Corporation to apply to the Internal Revenue Service and the Texas Comptroller of Public Accounts for a status as a “tax exempt” entity within the meaning of Section 501(c)(3) of the Internal Revenue Code and under the applicable laws and regulations of the State of Texas;

WHEREAS, the Board further deems it advisable and in the best interests of the Corporation for the Corporation, and the Corporation is required under law or regulation, to obtain certain licenses and permits, including [Describe any licenses or permits, including building permits, scale permits, etc.];

NOW, THEREFORE, BE IT RESOLVED that each of the officers of the Corporation be, and each of them hereby is, authorized and directed in the name and behalf of the Corporation, to apply for the Market to be a “certified farmers’ market” and to apply for and obtain any and all permits necessary or advisable for the Corporation to operate the Market; and

FURTHER RESOLVED that each of the officers of the Corporation be, and each of them hereby is, authorized and directed in the name and behalf of the Corporation, to complete and submit Form 1023 to the Internal Revenue Service, Form AP-205 with the Texas Comptroller of Public Accounts and such other forms and applications as are necessary or appropriate in such other jurisdictions as determined by the officers in order for the Corporation to obtain “tax exempt” status in each such jurisdiction; and

FURTHER RESOLVED that the officers of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to prepare, execute, deliver and file, or cause to be prepared, executed, delivered and filed, all reports, statements, documents and information, and to respond to all requests for additional information and to do such other things necessary or appropriate in connection with any statute, rule or regulation, whether foreign, federal, national, state, provincial or local in connection with such permits, applications or otherwise.

#### **General Authorizations**

FURTHER RESOLVED that the officers of the Corporation be, and each of them individually hereby is, authorized, empowered and directed to take or cause to be taken, in the name and on behalf of the Corporation, all such further actions and to prepare, execute and deliver or cause to be prepared, executed and delivered, in the name and on behalf of the Corporation, all such other agreements, documents and instruments and to incur and pay all such fees and expenses as such officer shall deem necessary or appropriate in order to carry out fully the purposes and intent of the foregoing resolutions; and

FURTHER RESOLVED that any person dealing with any officer of the Corporation in connection with any of the foregoing matters shall be conclusively entitled to rely upon the authority of such officer and by his or her execution of any document, agreement or instrument, the same shall be a valid and binding obligation of the Corporation enforceable in accordance with its terms; and

FURTHER RESOLVED that any and all actions previously taken by the Corporation or any of its officers in connection with the documents, transactions and actions contemplated by the foregoing resolutions hereby are adopted, ratified, confirmed and approved in all respects as and for the acts and deeds of the Corporation.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned, being all of the members of the Board of Directors of [Corporation], have executed this written consent as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

## Annex J: Key Contacts

### Annual Farmers' Market Certification

Texas Department of Agriculture-Licensing Office . . . . . 877-542-2474

### Aquaculture Permit

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#aquaculture](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#aquaculture) . . . 800-835-5832

### Egg Dealer Permit

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#eggs](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#eggs) . . . . . 800-835-5832

### Marketing Assistance

Texas Department of Agriculture – Go Texan Program

<http://www.gotexan.org> . . . . . 512-463-7624

### Marketing Assistance

The Sustainable Food Center

<http://www.sustainablefoodcenter.org> . . . . . 512-236-0074

### Firearms/Restricting Concealed Weapons

Texas Dept. of Public Safety

[www.txdps.state.tx.us/administration/crime\\_records/chl/chlsindex.htm](http://www.txdps.state.tx.us/administration/crime_records/chl/chlsindex.htm) . . . . . 800-224-5744

### Firework Permits and Questions

State Fire Marshal/Texas Department of Insurance and local fire authorities

[www.tdi.state.tx.us/fire/fmlifirework.html](http://www.tdi.state.tx.us/fire/fmlifirework.html) . . . . . 512-305-7900  
or local fire dept.

### Manufactured Foods

Texas Department of State Health Services – Environmental and Consumer  
Safety Section Foods Group

[www.tdh.state.tx.us/bfds/foods/default.htm](http://www.tdh.state.tx.us/bfds/foods/default.htm) . . . . . 512-834-6670

### Nursery/Floral License

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_nf\\_organic.htm](http://www.agr.state.tx.us/license/regulatory/reg_nf_organic.htm) . . . . . 800-835-5832

**Organic Certification**

Texas Department of Agriculture–Organic Certification Program

[http://www.agr.state.tx.us/license/regulatory/reg\\_nf\\_organic.htm#organic](http://www.agr.state.tx.us/license/regulatory/reg_nf_organic.htm#organic) . . . . . 800-835-5832**Perishable Commodities License**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_commodity\\_lic\\_info.htm#hmpe](http://www.agr.state.tx.us/license/regulatory/reg_commodity_lic_info.htm#hmpe) . . . . . 800-835-5832**Retail Food Establishment Permit**

County, municipal or public health authorities where the market is located or, if none,

the Texas Department of State Health Services . . . . . 512-719-0246

**Sales and Use Tax Permits**

Texas Comptroller of Public Accounts

Online application: [www.window.state.tx.us/permit](http://www.window.state.tx.us/permit) . . . . . 800-252-5555**Scales and Weights**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/reg\\_wm\\_license\\_info.htm](http://www.agr.state.tx.us/license/regulatory/reg_wm_license_info.htm) . . . . . 800-835-5832**Tax-exempt Status - Federal**

Internal Revenue Service (IRS)

[www.irs.gov/formspubs/lists/0,,id=97817,00.html](http://www.irs.gov/formspubs/lists/0,,id=97817,00.html)**Tax-exempt Status - State**

Texas Comptroller of Public Accounts

[www.window.state.tx.us/taxinfo/taxforms/ap-205.pdf](http://www.window.state.tx.us/taxinfo/taxforms/ap-205.pdf) . . . . . 800-252-5555**Tax-exempt Status – Local**

Local Taxing Authorities . . . . . N/A

**Vegetable Seed License**

Texas Department of Agriculture

[www.agr.state.tx.us/license/regulatory/seed/reg\\_seed\\_license\\_info.htm](http://www.agr.state.tx.us/license/regulatory/seed/reg_seed_license_info.htm) . . . . . 800-835-5832**Wine and Beer Retail Permits**

Texas Alcoholic Beverage Commission

[www.tabc.state.tx.us/liccom/LPDesc.htm](http://www.tabc.state.tx.us/liccom/LPDesc.htm) . . . . . 512-206-3360

**Organic Farming**

Texas Organic Farmers and Gardeners Association

[www.tofga.org](http://www.tofga.org) ..... 877-326-5175

**Community Supported Agriculture**

United States Department of Agriculture

[www.nal.usda.gov/afsic/csa](http://www.nal.usda.gov/afsic/csa)

[www.texascertifiedfarmersmarkets.com](http://www.texascertifiedfarmersmarkets.com)

## Annex K: ERS Group: Growing Economic Development with Farmers' Markets in Texas



### Growing Economic Development With Farmers' Markets in Texas

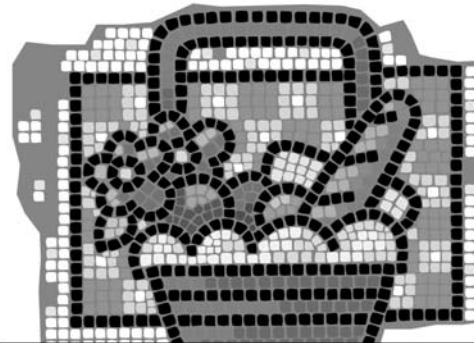
Across America, market days attract customers to buy produce, meat, and other products from local farmers' and producers. These events have attracted interest and growth in recent years – nationwide, 340 markets in 1970 have grown to over 3000 in 2001.<sup>1</sup> Over 50 markets can be found in Texas alone.

"Eat Local" is the theme of Farmers' Markets. Local food markets benefit the participating farmers', customers, and communities. This report outlines the economic benefits and challenges of creating a farmers' market in your community, and provides information on further resources and assistance available for those interested in forming new markets in their communities.

#### Economic Development through Farmers' Markets

Farmers' markets can be found in urban and rural, high-income and low-income communities, but each market reflects the community it serves. Despite differences in marketing and product selection across communities, farmers' markets can be an economic development tool in all types of communities.

This paper focuses on markets in rural communities.<sup>2</sup> For an in-depth discussion of the challenges that farmers' markets face in urban low-income communities, see Andrew Fisher's report: "Hot Peppers and Parking Lot Peaches."<sup>3</sup> The report "Catalysts for Growth: farmers' markets as a stimulus for economic development" from Loyola University's Economics Institute describes an urban mixed-income market in New Orleans.<sup>4</sup>



#### *A Rose by Any Other Name...*

*In many Texas communities, flea-markets, pulgas, and roadside vegetable stands informally fill the role filled by farmers' markets in other areas. In this report, the term "farmers' market" refers to any organized market structure that allows **direct** interaction between **multiple** local farmers' and customers in a community.*

*The benefits of farmers' markets accrue through the assumption of the retailer role by the farmer and the gathering of multiple sellers and buyers at one place and time. Many informal structures fill this role – whether it's called a farmers' market or a "pulga" is not important.*

*Additional benefits are available to markets that meet the requirements to become "Certified Texas Farmers' Markets" and participate in government programs such as the "Farmers' Market Nutrition Program." These programs are further discussed below.*

<sup>1</sup> Allison Brown, 2002 "Farmers' market research 1940-2000: An inventory and review." American Journal of Alternative Agriculture

<sup>2</sup> For further discussion on this topic, see Hilchey, Lyson, Gillespie, 1995 "Farmers' Markets and Rural Economic Development" Farming Alternatives Program Cornell University

<sup>3</sup> Fisher, A. 1999. Hot peppers and parking lot peaches: Evaluating farmers' markets in low income communities. Community Food Security Coalition, Venice, CA. Community Food Security Coalition staff indicate that the report will be available online at [www.foodsecurity.org](http://www.foodsecurity.org) in early 2006.

<sup>4</sup> Alcantara, Leslee 1999 "Catalysts for Growth: farmers' markets as a stimulus for economic development" Economics Institute. New Orleans LA Internet Source: [www.loyno.edu/economics.institute/Catalyststogrowth.html](http://www.loyno.edu/economics.institute/Catalyststogrowth.html)



Economic development occurs through the *creation* and *capture* of value.

- Farmers' Markets *create* value by bringing fresher produce to consumers in a community setting. Markets targeted at mixed-income customers often focus on the fresh and local aspect of farmers' markets. These markets will position their marketing around how food at a farmers' market is *better* than food bought elsewhere.
- Farmers' Markets *capture* the value of local agriculture by avoiding the processing and transport costs of the national food distribution system. Markets targeted at low-income customers best focus marketing on the cost-savings benefit of local markets.

Regardless of the marketing focus of a given market, all farmers' markets have the opportunity to provide both benefits to customers.

### **Creating Value**

A survey of farmers' market customers in Ontario found the primary draw of the market is the freshness of local products.<sup>5</sup> Local farmers' can get produce to a local market within hours of harvest, while a longer timeframe is required for produce reaching consumers through wholesale channels. Many customers of farmers' markets also value the interaction with the farmers' and the transparency of the food production process.<sup>6</sup>

Established markets provide farmers' with an opportunity to grow new vegetables for new markets. This new economic activity benefits communities and goes beyond the opportunity to sell existing products through a new sales channel. New markets create opportunities for new products that would not have otherwise been produced. For example, some farmers' markets offer sales opportunities for "seconds," produce that is cosmetically bruised and unacceptable to supermarkets but still acceptable to consumers in a farmers' market.<sup>7</sup>

The event aspect of many farmers' markets should not be overlooked as an important benefit. At least one survey notes customers appreciate the market as a place to "meet friends and socialize."<sup>8</sup> The limited time that many markets are open offers this benefit: unlike supermarkets, a weekly farmers' market acts as a focal event, aligning schedules of customers and building "social capital" in a community.

<sup>5</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 31

<sup>6</sup> Ibid. Pg. 33

<sup>7</sup> USDA Agricultural Marketing Service Dec. 2001. Improving and Facilitating a Farmers' Market in a Low-Income Urban Neighborhood: A Washington, DC, Case Study. Pg. 8

<sup>8</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 32



### Capturing value

A very strong argument for rural farmers' markets is that the wholesale food distribution network adds needless costs for rural localities. Imagine the hypothetical life of a vegetable grown in East Texas, shipped to Louisiana to be processed and stored in a distribution warehouse, and finally shipped back to an east Texas supermarket shelf. If the farmer sells that vegetable from the back of a truck at the local farmers' market, these transportation, processing, and storage costs are avoided.

In fact, studies indicate farmers' markets offer consumers savings of 10%-18% over supermarkets for comparable quality food.<sup>9</sup> But these lower retail prices are significantly higher than the prices faced by farmers' in the wholesale market.<sup>10</sup> By avoiding the costs of unnecessary transport and storage, both the consumers and the farmers' are better off.

The "buy local for less waste" argument shouldn't be confused with the "buy local to support local jobs" argument. The local jobs argument focuses on the fact that farmer's markets keep "food dollars" in a community. This is analogous to international trade: Local communities have a "balance of trade" with the outside world. Selling agricultural products to the outside world at low wholesale prices and buying similar products from outside distributors at high retail prices can contribute to a "trade deficit," draining funds from the local economy.

As with calls for protective barriers in international trade, this argument is strongest when combined with the value creation and cost savings described above. If the local market cannot offer at least as much value as any outside system, value is destroyed and the market will be unsustainable; Consumers or producers would find themselves better off with the traditional marketing channels.

If value is created by buying local, both the producers and the customers can gain from buy local campaigns and the oft-discussed "multiplier" effect of local business will grow the economic impact of the market. An economic multiplier estimates the total economic impact of a dollar of sales at a market. For every dollar the customer spends at the market, the farmers' will pay their workers some amount, who will buy local products from someone who pays their workers some amount, etc. The sum of all of the local economic activity associated with \$1 in sales is called the economic multiplier. Estimates of the "multiplier" associated with farmers' markets range from 1.58 to 2.<sup>11,12</sup>

<sup>9</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf) PG. 13.

<sup>10</sup> National Association of Farmers' Markets "Getting Started: Benefits" Internet Source: [www.farmersmarkets.net/started/benefits/default.htm](http://www.farmersmarkets.net/started/benefits/default.htm) Accessed 12/27/05

<sup>11</sup> Otto, D. and Varner, T. "Consumers, Vendors, and the Economic Importance of Iowa Farmers' Markets: An Economic Impact Survey Analysis" Department of Economics, Iowa State University.

<sup>12</sup> Cummings, H, Kora, G and Murray, D, 1999. Farmers' markets in Ontario and their economic impact. Ontario, University of Guelph. Pg. 57.



### **Additional Benefits**

Researchers have also identified additional benefits to farmers' markets such as the entrepreneurial "incubator" function of local markets and add-on commerce at businesses near the markets themselves.

Farmers' learn from their interactions with customers and competitors at community markets.<sup>13</sup> The feedback they receive from customers gives them direct insight on customer wants and purchase trends. The producers can use this feedback to create agricultural products that anticipate future market needs. Once the products are created, the "incubator" function of farmers' markets give farmers' a natural test market for expansions of their business lines. Whether the new products are exotic vegetables or home-baked pies, these businesses can grow beyond the local market into larger ventures. Starbucks and Bodyshop are two nationally known brands that started in local public markets.<sup>14</sup>

The "event" aspect of farmers' markets also benefits local businesses that are not directly participating in the market. Studies in the US, UK, and Canada have found increases in business for local shops during market hours that range from 5% to 50%<sup>15</sup>

## **Resources for Farmers' Markets in Texas**

### **Marketing Assistance in Texas**

- The Texas Department of Agriculture sponsors the Go Texan Certified Farmers' Market Program. The Texas Department of Agriculture publishes a directory of Texas Farmers' markets, and the food marketing program assists Texas agricultural producers market their goods.

More information available from [www.gotexan.org](http://www.gotexan.org)

And the Food Marketing Staff can be reached at (512) 463-7624

- The Sustainable Food Center is a Texas non-profit that works to improve access to local, healthy, and affordable food for children and adults in Central Texas. The Sustainable Food Center operates the Austin Farmers' Market, and has offered to be a resource to communities wishing to open markets in their communities.

Contact: [www.sustainablefoodcenter.org](http://www.sustainablefoodcenter.org), (512) 236-0074

<sup>13</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [http://www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf)

<sup>14</sup> Alcantara, Leslee 1999 "Catalysts for Growth: farmers' markets as a stimulus for economic development" Economics Institute. New Orleans LA Internet Source: [www.loyno.edu/economics.institute/Catalyststogrowth.html](http://www.loyno.edu/economics.institute/Catalyststogrowth.html)

<sup>15</sup> Bullock, Simon. "The economic benefits of farmers' markets" Friends of the Earth Trust August 2000. Internet Source: [www.foe.co.uk/resource/briefings/farmers'\\_markets.pdf](http://www.foe.co.uk/resource/briefings/farmers'_markets.pdf) pg. 8



### **Farmers' Market Nutrition Programs**

• Farmers' Market Nutrition Programs (FMNPs) is a program that provides benefits for WIC recipients and income-eligible seniors that are redeemable only at approved farmers' markets. FMNP is a federal program that requires a 10% state match. In Texas, this program is not currently accepting new markets and has undergone cuts in recent years.

To check the current status of this program, contact:

Mary Alice Winfree

Texas Department of Health FMNP Program

512 341-4400.

See also:

The National Association of Farmers' Market Nutrition Programs: [www.nafmnp.org/](http://www.nafmnp.org/)

FMNP Frequently Asked Questions: [www.fns.usda.gov/WIC/FMNP/FMNPfaqs.htm](http://www.fns.usda.gov/WIC/FMNP/FMNPfaqs.htm)

### **Food Stamp program**

• Food stamps and Temporary Assistance for Needy Families (TANF) in Texas is administered through an Electronic Benefit Transfer (EBT) card known as the Lonestar Card. Several pilot programs have been run to study the use of EBT processing systems at farmers' markets, with mixed results. Farmers' markets face challenges from cost of the EBT equipment and the power and phone infrastructure necessary to operate the EBT system.

Nevertheless, several Texas farmers' markets process EBT cards, including:

- Ridgmar Farmers' Market, Ft. Worth,
- Del Rio Farmers' Market,
- San Antonio Farmers' Market/Tri-State Farmers' Market,
- Lufkin Farmers' Market,
- Jacksonville Farmers' Market,
- Eagle Pass Farmers' Market.<sup>16</sup>

For more information on becoming an EBT retailer, see :

[www.fns.usda.gov/fsp/retailers/becoming.htm](http://www.fns.usda.gov/fsp/retailers/becoming.htm)

### **Additional online resources on Farmers' Markets and Setting up Farmers' Markets**

North American Farmers' Direct Marketing Association

[www.nafdma.com/Resources/FMCresources/](http://www.nafdma.com/Resources/FMCresources/)

USDA Agricultural Marketing Service Farmers' Market Program

[www.ams.usda.gov/farmers/markets](http://www.ams.usda.gov/farmers/markets)

<sup>16</sup> "Food Stamp Program 2005 Growing Season."

Internet Source: [www.fns.usda.gov/fsp/ebt/2005-growing.htm](http://www.fns.usda.gov/fsp/ebt/2005-growing.htm) accessed 2.23.06

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### **In conjunction with**



Community  
Building with  
Attorney  
Resources

Linking  
Lawyers with  
Nonprofits.

## Annex L: Endnotes

- 1 ERS Group, “Growing Economic Development with Farmers’ Markets in Texas,” at 2-5 (February 2006).
- 2 See ERS Group at 3.
- 3 See ERS Group at 4.
- 4 Please note that in order to become a certified farmers’ market, Texas law requires that the market’s bylaws state that at least two “members” of the market must sell their own produce; however, representatives of the Department of Agriculture have verbally informed us that it is sufficient to have two vendors selling their own produce and that this requirement is not intended to refer to “members” of the type described in this section. Nevertheless, it may be preferable to declare that all accepted vendors are members and explicitly state that members have no governance role. In addition, to participate in the Farmers’ Market Nutrition Program, a vendor must be a member of a Farmers’ Market.
- 5 Excerpt from [www.thefarmersmarket.us/join/bylaws.asp](http://www.thefarmersmarket.us/join/bylaws.asp) (February 23, 2006).
- 6 Internal Revenue Service, “Applying for 501(c)(3) Tax Exempt Status” (<http://www.irs.gov/pub/irs-pdf/p4220.pdf>).
- 7 See footnote 4.
- 8 Texas Admin Code - Title 4, Part 1, Chapter 17, Subchapter D.
- 9 See footnote 4.
- 10 See § 229.162(33) of the Texas Food Establishment Rules.
- 11 See § 229.163 of the Texas Food Establishment Rules.
- 12 7 C.F.R. § 205.
- 13 26 Tex. Reg. 5642
- 14 You should consider whether the grace period should be shorter and, once in compliance, whether reinstatement should be automatic. Underlying issues include: what will happen to the vacant booth during the Vendor’s absence? Too many vacant booths drive down the attractiveness of the entire market; however, temporarily filling booths can be difficult and can also impact market character. Also, the circumstances of the non-compliance, such as if the Vendor forged a permit, should be considered when deciding whether the Vendor should have a second chance.
- 15 You should consider the types of products that Vendors may sell, particularly whether they may sell only items produced by that Vendor or also sell items that they purchased wholesale. While allowing Vendors to “resell” some items would potentially make the market accessible to a larger group of vendors, it also risks creating a “flea market” environment as well as potentially undercutting Vendors who are selling similar items that they produced. A similar issue concerns reselling items produced by other farmers. Some markets permit such reselling or “carrying” with the prior approval of the Market Manager, but limit the amount of items that may be carried.
- 16 You should consider whether more formalized procedures for absences and leaving early should be provided. For example, consider requiring Vendors to seek approval for an absence at least a certain amount of time in advance (i.e. 24 or 48 hours) or to follow certain procedures to “check out” when leaving early. Also, consider whether the space can be allocated to another Vendor for that day, including any “stand by” Vendors that may wish to participate in the market whenever someone is absent. Further, different penalties for absences may be appropriate. For example, a Vendor may lose the designated booth location for a specified time for an unexcused absence, be barred from the market for a specified time for two or more unapproved absences and be expelled from the market for a specified number of unapproved absences. It may also be appropriate to limit the number of excused absences to prevent Vendors from abusing that process. Finally, describing reasons that would be considered acceptable for an absence (i.e. sickness, death in family, etc.) would help alleviate any claims that the Market Manager was favoring certain Vendors over others.
- 17 Consider whether different penalties would be appropriate. See also footnote 16 above.
- 18 Some markets require the vendors to provide their own trash cans and bags. In addition, you should consider how the Market will provide a dumpster and the collection times.
- 19 If Vendors will be allowed to park vehicles in the market, then explicit rules prohibiting the operation of vehicles outside of permitted hours, which should exclude market hours and other times when pedestrians are present at the market site, should be established. Insurance requirements for Vendors should also be analyzed in light of such activity.
- 20 You should consider whether a farmer (or the maker of other products) must be present in person at the Market or if it is permissible that only employees of that farmer or other producer may attend.
- 21 Depending on the weather conditions in the area, it may be appropriate to provide at least a partial refund for excessive inclement weather closings. Potentially, the refund could be the amount that the Market saves by not being open on that day.
- 22 You should consider how rents will be structured. While many markets set a relatively high fixed rent for the entire market season (i.e. \$150 - \$250), other markets may require a lesser commitment (monthly or weekly) and still other markets even set aside some stalls (or make stalls available if a vendor is absent) on a daily basis (usually around \$20/day). Some markets also charge a relatively low base rent plus a percentage of the gross revenue of the Vendor (i.e. \$5 + 10% of gross revenues). While a rent based on revenue sharing certainly allows the market to share in its own success, it can also make it difficult to collect and to budget, especially at the start when it is difficult to predict the success. Though we are not aware of this method being used, another option is to vary rents based on the location of the stall, with prime locations bearing higher rents. (Notably, many markets, however, assign stalls based on seniority. Initially, a drawing or some other random means could be used to assign stalls if they are

- all to have the same price.) However set, the rents should be low enough to allow all stalls to be sold and high enough to cover most (if not all) of the Market's bills and other obligations and to build a small operating surplus for the Market.
- 23 Many markets require payment in full of the market fee at the time of the application. In this way, the markets are not as likely to lose money if a Vendor does not show up as the market will have already been paid in full.
- 24 This limitation is important to keep people from renting and then subletting booths at a higher price.
- 25 While the flexibility is good for the Market, organizers should be aware that it can lead to claims of favoritism if not carefully managed or explained. See also footnote 16 above.
- 26 If the rents are based on revenue of the Vendors, then this reporting is critical and probably should be made more often than only at the end of the season, i.e. monthly or (even better) weekly. Even if rent is a fixed amount, this information should be gathered in order to analyze how well the market is performing and to provide any requested information to the USDA or other groups interested in promoting or studying farmers' markets. In this instance, it may also be helpful to have the information on a more frequent basis in order to assess busy and slow times and to see which items are selling at what times. This information would greatly assist any marketing efforts undertaken by the Market.
- 27 In order to enforce this limitation, the necessary signs, as described in the manual, must be posted at the Market.
- 28 Some markets have included a chart to identify the potential violations and the penalties, including for first, second and third offenses. Others have used a "penalty points" system where each violation gives the Vendor a certain number of penalty points and the number of penalty points accrued then determine the discipline taken. It is important to have consistency in discipline, both for general fairness and for legal reasons. Such charts and point systems help to create consistency. At the same time, when beginning your Market, you may desire additional flexibility than a fixed system would allow – both because you will be learning what violations are truly problematic for your Market and because there may be a lot of violations in the beginning as all Vendors are learning the rules for the first time. Whichever path is chosen, we believe that it is critical that the Market's board carefully monitor all disciplinary actions in order to assess whether the Market is being managed as desired and to help the Market Manager identify any trouble areas.
- 29 Some markets permit notices to be given orally; however, it is better to provide the Market Manager with disciplinary forms that he or she can fill out and give to the Vendor, while keeping a copy for the Market's records.
- 30 If there are other officers, consider substituting those persons instead of the board.
- 31 While some markets make this statement, it is not appropriate in many situations. There are many situations in which it may be necessary to disclose the complainant, especially if a violation is involved, and this type of statement could cause problems for the Market in such situations. A better approach would be to say that "The Market will endeavor to maintain the confidentiality of the complainant's identity if appropriate, as determined in the sole discretion of the Market."
- 32 Delete if the Association will not allow Vendors to become "members".
- 33 Unlike for-profit corporations, the names of Texas non-profit corporations are not required to contain the terms "company," "corporation," "incorporated" or "limited." Tx. Bus. Org. Code § 5.054. Before filing the Certificate of Formation, you should verify the availability of your chosen name by contacting the Corporations Section of the Office of the Texas Secretary of State at (512) 463-5555 or [corpinfo@sos.state.tx.us](mailto:corpinfo@sos.state.tx.us). Even though you verify the availability of the name in advance, the final determination may be made only once the actual documentation is filed. As a result, it is imperative that no financial expenditures (i.e. letterhead or business cards printed, logo designed, etc.) based on a preliminary determination. Furthermore, you should also determine whether there are any businesses or non-profits with a similar name to avoid any potential trademark issues. The United States Patent and Trademark website ([www.uspto.gov](http://www.uspto.gov)) is an excellent place to begin your search to see if others have filed a trademark on a similar name.
- 34 If you will be relying on a different exemption, the appropriate reference should be substituted and other revision made to this form to comply with that exemption.
- 35 Modify as appropriate if members are used. See Articles Eight and Nine below.
- 36 The address must be a place at which the agent can be physically served with a lawsuit or other similar official papers. It cannot be, for example, a P.O. Box.
- 37 The registered agent can either be another entity (such as a corporation formed or registered in Texas) or a person residing in Texas. The Corporation cannot act as its own registered agent.
- 38 See footnote 4 above.
- 39 If a board of directors is used, the board must have at least three board directors and the names and addresses of the initial directors must be listed in the original Certificate of Formation. If desired, the address of the farmer's market itself can be used for each director.
- 40 If members will have governing authority, consider adding indemnification for them.
- 41 The sole incorporator is the person signing and responsible for filing the Certificate with the Texas Secretary of State. After the filing has been accepted, the incorporator has no further role and no rights or powers with respect to the Corporation.
- 42 The Bylaws are an internal document that, unlike the Certificate of Formation, are not filed with the Texas Secretary of State. You will, however, be required to furnish your Bylaws in connection with your tax exempt applications and should make them available to your board, officers and, if you have them, members.
- 43 This is the business address of the Corporation.

- 44 As discussed in the manual, there are many issues to be considered by organizers when deciding what role Members should play – or if the Corporation should have any Members at all. If Members are used, it is preferable to include a basic statement to that effect in the Certificate of Formation and set forth the rights and powers of the Members in the Bylaws. The reason is that amending the Bylaws is an easier process than amending the Certificate of Formation, which requires a filing with the Texas Secretary of State. In this manner, the Corporation can modify the classes of Members to give additional rights as desired, such as permitting the Members to elect one (or more) Directors, rights to approve certain changes to the Market’s rules or any other powers that may desired – or, as drafted here, no powers at all. In addition, it is important to note that, under Texas law, the Members (by action of one-tenth of the members) will have the power to call special meetings. Given the lack of voting power in this form of Bylaws, it is unclear as to why they would do so; however, this power should be kept in mind, particularly if the Members (or any group of members) is given additional powers. In addition, once Members have voting rights, they will also have the right to approve major transactions, such as mergers.
- 45 The Board must have at least three (3) directors, but a larger number may be selected. Having an odd number of directors reduces the possibility of tie votes.
- 46 If desired, the potential locations of board meetings may be limited by revising this provision.
- 47 If desired, written notice of the meetings can be required; however, such a requirement can cause meetings to be considered to be improperly held if proper notice is not given.
- 48 If desired, the potential locations of board meetings may be limited by revising this provision.
- 49 Consider providing a shorter period. If shorter, the drawback is that it may be more difficult for Directors to attend on short notice. If longer, the drawback is that if an emergency requiring attention arises and not all Directors agree to waive the notice requirements, then the Corporation will not be able to take action for that longer period.
- 50 Consider whether it is desirable for the Corporation to reimburse such expenses.
- 51 The corporation must at least have a president and a secretary. The president and secretary positions may not be held by the same person. (Tx. Bus. Org. Code § 22.231(a) (2006)). Other possible positions and descriptions include:  
 Vice President: In the absence of the president or in the event of his or her inability or refusal to act, the vice president shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president. If there is more than one vice president, then the order of succession shall be set by the Board. Any vice president shall perform such other duties as from time to time may be assigned to her/him by the president or board of directors.  
 Treasurer: If required by the Board, the treasurer shall give a bond for the faithful discharge or her/his duties in such sum and with such surety or sureties as the Board shall determine. He or she shall prepare an annual financial statement correctly reflecting the financial condition of the Corporation, or statements at any other time when so directed by the President or by the Board. He or she shall also have charge and custody of and be responsible for all funds and securities of the Corporation, receive and give receipts for monies due and payable to the Corporation, and deposit all such monies in the name of the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with these Bylaws; and in general perform all the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board.
- 52 Most farmers’ markets have this position. Should the organizers choose, however, this role may be fulfilled by the president, a vice president (i.e. Vice President - Market Manager) or in such other manner as the organizers may choose. It would be in the best interests of all parties, though, to more specifically spell out the duties of the person serving in this role. To allow for change, such directives should be given by board resolution as opposed to setting such duties out in the bylaws or in some other manner that would not allow the duties to be expediently modified.
- 53 Most companies use a calendar year for their fiscal year; however, you should discuss this issue with the Corporation’s accountants or tax preparers as there are reasons why a different fiscal year may be appropriate for a farmers’ market.
- 54 While the Certificate of Formation prevents any modification of this section from reducing coverage for any past acts, many companies want to provide additional protection of indemnification rights by requiring a vote of greater than a majority of the board (i.e. two-thirds or even unanimous) in order to modify these provisions.
- 55 These requirements can be found in Texas Administrative Code Title 4, Part 1, Chapter 17, Sub chapter D.
- 56 The law does not specify the percentage only that a percentage must be set forth in the Bylaws.
- 57 Please note that the actual statute requires that the market have at least two “members” who sell their own produce; however, representatives of the Department of Agriculture have verbally informed us that it is sufficient to have two vendors selling their own produce. If the Corporation has Members, however, who meet this requirement, then it is preferable that this provision refers to “Members” instead of “vendors.”
- 58 It is not required that the Corporation have a seal; however, banks and other institutions sometimes require them. Seals can be obtained for a nominal cost from corporation suppliers.
- 59 Texas law requires that the Corporation initially have at least a President and a Secretary, which may not be the same person. Other positions contemplated by the Bylaws, including that of the Market Manager, can be appointed at a later date.

- 60 As mentioned in the Bylaws, a corporate seal is not required though it is advisable as certain institutions, such as banks, sometimes still require a seal.
- 61 Change all pronouns to feminine form as appropriate.
- 62 If the Corporation initially will have a Treasurer or Chief Financial Officer, then this statement likely should refer to that position instead.
- 63 If there are many officers, you should limit those authorized to access the bank account to a select few. Also, most banks also have a form of a resolution that they require the Corporation to adopt in order to open an account.
- 64 Include only if the Corporation will have Members. Also, this resolution likely will need to be modified to specifically work with the types of Members contemplated by the Bylaws.
- 65 While this form of resolution is set up for a lease, the Corporation may not have a lease that it is ready to execute at the time of its formation. However, these resolutions may be easily modified to refer to any other material agreement into which the Corporation wishes to enter at the time of its formation – or later.