

SOUTHWEST VIRGINIA FARMERS MARKET MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (“*Agreement*”) is made and entered into this 12th day of August, 2013 (“*Effective Date July 01, 2013*”), by and between Carroll County, Virginia, a political subdivision of the Commonwealth of Virginia (“*County*”), and the Carroll-Grayson-Galax Regional Industrial Facilities Authority, a Virginia regional industrial facilities authority organized pursuant to Chapter 64 of Title 15.2 of the Code of Virginia, and also known as the Blue Ridge Crossroads Economic Development Authority (“*BRCEDA*”).

W I T N E S S E T H:

Whereas, the Southwest Virginia Farmers’ Market (“*SWVFM*”) is one of four state-owned farmers’ markets in Virginia and is located in Carroll County, Virginia; and,

Whereas, SWVFM consists of a retail division where producers can sell directly to the public (“*Retail Market*”) and a wholesale division where the regions producers can access a variety of services including grading, packing, cooling, and wholesale sales that increase the marketability of the produce (“*Wholesale Market*”) (Retail Market and Wholesale Market collectively “*Farmers’ Market*”); and,

Whereas, the Wholesale Market is owned by the Commonwealth of Virginia through the Virginia Department of Agriculture and Consumer Services (“*Agency*”) and operated by the County pursuant to a Memorandum of Agreement #301-10-017; and,

Whereas, the Retail Market is owned by the County; and,

Whereas, the County has operated the Farmers’ Market since 1992; and,

Whereas, the Farmers’ Market has had a significant positive impact on the community in Southwest Virginia through an increased access to healthy food, a diversification of local foods produced, a strong educational program focused on the awareness of different methods of food production and healthy living, and access to facilities that allow producers to add value and marketability to their crops; and;

Whereas, historically the revenue of the Farmers’ Market has been insufficient to cover the overall operating costs of the Farmers’ Market and as a result the County has been required to contribute additional capital and resources to the Farmers’ Market; and,

Whereas, the County believes that in order for the revenue to grow to a point to cover the operating costs of the Farmers’ Market certain daily operations of the Farmers’ Market need to be operated by a third party;

Whereas, the County understands that in the short-term the County will need to continue to contribute to the costs of operating the Farmers’ Market but desires that these contributions will be gradually reduced over time; and,

Whereas, the County desires that BRCEDA provide certain services with respect to the management of the Farmers’ Market as more fully described below (“*Management Services*”) and BRCEDA desires to provide the Management Services;

Now Therefore, in consideration of the mutual promises and covenants herein contained and incorporating the recitals into the Agreement, the County and BRCEDA agree as follows:

Article 1
Role of BRCEDA

1.1 **Appointment.** The County hereby appoints BRCEDA, and BRCEDA hereby accepts the appointment, as the sole and exclusive manager of the Farmers’ Market through a SWVFM Management Board (“*Management Board*”) designated by BRCEDA to manage and supervise the operations and functions of the Farmers’ Market.

1.2 **Management Board.** The Management Board shall be comprised of five individuals. Two individuals shall be appointed by BRCEDA and three individuals shall be appointed by the County. The term of office for each member of the Board shall be one year and there shall be no limit on the number of terms a Member may serve. Members shall continue to serve until replaced. Members shall not be compensated for their service on the Management Board but may be reimbursed for expenses incurred for their service on the Board, including mileage and expenses related to attendance at Board meetings. Members shall be subject to the applicable provisions of the Virginia Conflict of Interest Act and shall file prior to appointment and annually a statement of economic interest pursuant to Section 2.2-3115 (B) of the Code of Virginia.

1.3 **Scope of Services.** The Management Board will operate the Farmers’ Market in a safe, clean, and aesthetically acceptable condition and follow all applicable local, state, and federal regulations. The services provided by the Management Board will include, but are not limited to, the following:

(a) **Management of the Retail Market.** Supervision of the operations of the Retail Market including vendor selection, fees, and special events.

(b) **Management of the Wholesale Market.** Supervision of the operations of the Wholesale Market including the grading/packing/cooling program, operation of the hydro-coolers, management of food-safe containers, management of the aggregation and processing facilities, and sales.

(c) **Education Programs.** The Management Board will continue the strong educational programs provided by the Farmers’ Market to the local community including tours of the facility, grower meetings, field days, harvest demonstrations, irrigations demonstrations,

packing demonstrations, good agricultural practices meetings, new produce trials, and food safety awareness.

(d) **Long Range Planning and Implementation of New Programs.** The Management Board will counsel with the County and advise and implement a long range plan to expand the scope and services offered by the Farmers' Market..

1.3 **Personnel.** The County will be responsible for providing sufficient personnel to the Management Board to provide the Scope of Services. Operational control of these employees shall be under the direct supervision of a County Operator who shall work with the Management Board to manage the Farmers' Market. All County employees assigned by the County to the Farmers' Market shall be considered for all purposes County employees and not employees of the Management Board. Subject to available funding, the Management Board will reimburse the County for all County costs as herein defined. Subject to approval of BRCEDA and the County, the Management Board may employ individuals to work at the Farmers' Market under the supervision of the County operator. In employing such employees the Management Board shall consult with the County operator on the employment and selection of such employees.

1.4 **Fees.** The Management Board will charge and collect a fee from vendors and producers for the use of the Farmers' Market facilities and education program. The Management Board may charge additional fees for services provided. Any revenue collected through fees or other activity will allocated as follows:

(a) First, to any direct costs incurred by the Management Board.

(b) Second, to reimburse the County for County Expenses.

(c) Third, at the sole discretion of the Management Board, to the establishment and maintenance of a fund to be utilized for i) expansion of the services of the Farmers' Market; ii) towards future projects at the Farmers' Market; iii) as a capital reserve, or iv) to cover indirect costs incurred by BRCEDA and the County in the operation of the Farmers' Market.

1.5 **Term.** Subject to the right to terminate as herein provided, the initial term ("**Term**") of this Agreement will begin on July 01, 2013 and end on June 30, 2023. The Agreement may be extended by mutual written agreement of the parties for two (2) additional five (5) year periods, within sixty (60) days prior to the expiration of the then-current term of the Agreement. The parties will operate on a fiscal year basis commencing on July 1 of each year and ending on June 30 of each subsequent year. Any partial month or year will be prorated.

1.6 **Testing and Site Inspection.** The County and the Management Board may conduct any test/inspection they may deem advisable to assure goods and services confirm to the proper specifications.

1.7 **Accounting Records.** The Management Board will arrange for the keeping of full and adequate books of account and other records reflecting the operation of the Farmers' Market,

which it will make available to either party hereto for inspection. Either party shall have the right to have the books and records of the Farmers' Market audited by an outside auditing firm at any time upon request.

Article 2 Role of the County

2.1 Maintenance and Utility. The County will provide a County employee to serve as the County Operator to run the day-to-day operation of the Farmers' Market; coordinate with the Management Board the scope of services to be provided by the Management Board; implement the directions of the Management Board; provide input into decision to be made by the Management Board; and, supervise Management Board employees in the operation of the Farmers' Market. The County is also responsible initially for the day-to-day and long-term maintenance of the Farmers' Market facilities and grounds and all utility costs including trash collection, electrical services, water, and sewer. All expenses paid or incurred by the County related to the Farmers' Market, including, but not limited to, utility costs, maintenance, operational expenses and direct and indirect costs and expenses related to County personnel are defined as "*County Expenses*".

2.2 Carroll County Fair. The County will administer the Carroll County Fair and coordinate the use of the Premises with BRCEDA pursuant to that certain Memorandum of Agreement by and between the Agency and the County #301-10-017.

2.3 Obligation to Fund. During the Term of this Agreement, the County will pay to BRCEDA any and all amounts necessary to pay any deficit, costs or expenses which BRCEDA or the Management Board may incur in the performance of this Agreement and which are not paid by funds generated by revenue from the Farmer's Market. Neither BRCEDA nor the remaining members of BRCEDA, Grayson County and the City of Galax, will be required to pay any amount to cover any deficit of the Farmer's Market, the Management Board or BRCEDA in relation to this Agreement or the operation or maintenance of the Farmer's Market. Reimbursement by the County shall be made to BRCEDA within 30 days of request and receipt of the invoice from BRECEDA

Article 3 Insurance

3.1 Insurance. BRCEDA certifies that at a minimum it will have the following insurance coverage at the time this Agreement is executed. BRCEDA further certifies that BRCEDA will maintain this insurance coverage during the entire term of this Agreement and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission. Cost of these policies shall be considered costs of operation of the Farmer's Market.

- (a) **Workers' Compensation** - Statutory requirements and benefits.
- (b) **Employer's Liability** - \$100,000.

(c) **Commercial General Liability** - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, produces and completed operations coverage. The County and the Agency must be named as an additional insured and so endorsed on the policy.

(d) **Automobile Liability** - \$1,000,000 per occurrence.

Article 4 **Events of Default; Termination**

4.1 **Events of Default.** Each of the following will constitute an “*Event of Default*” under this Agreement:

(a) The failure of any party to pay when due any amount payable by such party to or on behalf of any other party under this Agreement (including, but not limited to, expenses incurred in connection with the Farmers’ Market regardless of what party may bear the liability for such expenses under applicable law in the absence of this Agreement) for a period of sixty (60) days after written notice from the other party that such payment is due and payable; or

(b) BRCEDA or the County fails to remedy any other breach of its obligations under this Agreement within sixty (60) days (or such longer time as the other party may in writing allow), after receipt of written notice from the other party; or

(c) Management Board’s actions in connection with the Farmers’ Market which causes or exposes the County to liability or damages.

4.2 **Termination.**

(a) **Termination for Cause.**

(1) Default. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement by providing written notice of such termination to the defaulting party.

(2) Failure to make sufficient revenues. At any time after fiscal year 2014, either party may terminate this Agreement if the Farmer's Market fails to generate sufficient revenues in any subsequent fiscal year from operations to meet expenses.

(b) **Termination without Cause.**

(1) During the first two (2) years, either party may terminate this Agreement without cause on sixty (60) days written notice to the other party.

(2) BRCEDA may terminate this Agreement without cause at any time by providing the County with 180 day written notice.

(c) **Sale, Lease, or Closure.** In the event that the Agency decides to sell, lease, or close the Wholesale Market, the Agency terminates its agreement with the County to operate the Wholesale Market, or the County decides to sell or close the Retail Market, then the County will have the option to terminate this Agreement without cause. To exercise this option, the County will provide not less than one hundred eighty (180) days advance written notice. Upon the date of termination due to a sale, lease, or closure, BRCEDA will be compensated for all unpaid fees or unreimbursed expenses.

Article 5
Miscellaneous

5.1 **Notices.** Any notice, statement, or demand required to be given under this Agreement will be in writing and will be deemed to have been given if delivered personally or upon receipt by overnight courier or by registered or certified mail, return receipt requested, addressed as set forth below or to such other addresses as the parties designate in the manner herein provided.

Carroll County

Gary Larrowe
County Administrator
Carroll County, Virginia
605-1 Pine Street
Hillsville, Virginia 24343
Tel: (276) 730-3001
Fax: (276) 730-3004
carrolladmin@carrollcountyva.org

BRCEDA

Kenneth McFayden
Regional Director
Carroll-Grayson-Galax Regional Industrial Facilities Authority
1117 East Stuart Drive
Galax, Virginia 24333
Tel: (276) 236-0391
Fax: (276) 236-0485
director@brceda.org

5.2 **Not a Lease.** The County and BRCEDA acknowledge that this Agreement does not constitute a lease of the Farmer's Market and BRCEDA has no possessory interest in the Farmer's Market.

5.3 Survival. Unless expressly stated to the contrary, all obligations for any payment or reimbursement by one party to the other will survive the end of the Term. The provisions of Article 3 and 4 of this Agreement will survive the end of the Term.

5.4 Partial Invalidity. If any of the phrases, sentences, clauses, or paragraphs contained in this Agreement are to be declared invalid by the final and unappealable order, decree, or judgment of any court, this Agreement will be construed as if such phrases, sentences, clauses or paragraphs had not been inserted, provided that the economic basis of this Agreement is not hereby altered.

5.5 Modifications; Waivers. This Agreement may not be changed, modified or terminated, nor may any provision hereof be waived, except by a writing signed by the party to be charged with any such change, modification, termination, or waiver. The waiver of any of the terms and conditions of this Agreement on any occasion or occasions will not be deemed a waiver of such terms and conditions on any future occasion.

5.6 Governing Law. This Agreement is governed by, interpreted under, construed and enforced in accordance with the laws of the Commonwealth of Virginia and the courts of the Commonwealth of Virginia will have jurisdiction over any matters arising hereunder.

5.7 Assignment. No party hereto may assign or transfer any of its rights or delegate any of its obligations under this Agreement to any other person, firm, or company without the written consent of the others. Any such consent may be withheld in a party's sole and absolute discretion.

5.8 No Joint Venture and Independent Contractor. Nothing in this Agreement creates a joint venture or partnership and, except as may be expressly set forth herein, no party is given the authority to bind or obligate any other party. The services rendered by BRCEDA are as an independent contractor.

5.9 Counterparts. This Agreement may be executed in counterparts, all of which together will form a single document. Counterparts may be exchanged by facsimile, which will be considered binding.

5.10 Drug-Free Workplace. During the performance of this Agreement, BRCEDA will (i) provide a drug-free workplace for BRCEDA's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in BRCEDA's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of BRCEDA that BRCEDA maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “*drug-free workplace*” means a site for the performance of work done in connection with a specific agreement awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the agreement.

5.11 Anti-Discrimination. BRCEDA certifies that it will conform to the provisions of the *Federal Civil Rights Act* of 1964, as amended, as well as the *Virginia Fair Employment Contract Act* of 1975, as amended, where applicable, the *Virginians With Disabilities Act*, the *Americans With Disabilities Act* and Section 2.2-4311 of the *Virginia Public Procurement Act* (VPPA).

(a) During the performance of this Agreement, BRCEDA agrees as follows:

(1) BRCEDA will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of BRCEDA. BRCEDA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(2) BRCEDA, in all solicitations or advertisements for employees placed by or on behalf of BRCEDA, will state that BRCEDA is an equal opportunity employer.

(3) Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation will be deemed sufficient for the purposes of meeting these requirements.

(b) BRCEDA will include the provisions of section 6.10 (a) above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

5.12 Immigration Reform and Control Act of 1986. By entering into this Agreement, BRCEDA certifies that BRCEDA does not, and will not during the performance of this Agreement for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal *Immigration Reform and Control Act* of 1986.

5.13 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supercedes any discussions, offers, proposals, agreements or promises with respect thereto; provided, however, in the event the terms of this Agreement conflict with the terms of any agreement between the County and the Agency related to the Wholesale Market (“*Agency Agreements*”) then the terms of the Agency Agreements will govern.

[Signatures are on the following page.]

IN WITNESS WHEREOF, the County and BRCEDA have duly executed this Agreement as of the day and year first written above.

CARROLL COUNTY, VIRGINIA:

By: _____
Name: _____
Title: _____

CARROLL-GRAYSON-GALAX REGIONAL
FACILITIES AUTHORITY

By: _____
Name: _____
Title: _____