

**TO:** Town Board  
**FROM:** Charles D. Grieco, Esq.  
**DATE:** March 20, 2014  
**RE:** Farmers Market Agreement Resolution

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Honorable Members of the Town Board, below is our proposed resolution authorizing the execution of the agreement with Kirchmyer Media, LLC to manage and promote the proposed Farmers Market on the Town Hall property:

**WHEREAS** the Town Board of the Town of West Seneca is desirous of allowing the operation on a weekly basis of a Farmers Market on the Town Hall property; and

**WHEREAS** Kirchmyer Media, LLC has submitted a proposal to the Town Board to manage and promote such market pursuant to a formal agreement between the parties, the terms of which the Town Board finds beneficial to the Town;

**NOW, THEREFORE, BE IT RESOLVED** the Town Board hereby authorizes the operation of a Farmers Market during 2014 pursuant to the terms of the Memorandum of Agreement between the Town and Kirchmyer Media, LLC, dated March 24, 2014 ("Agreement"), and

**BE IT FURTHER RESOLVED** that the Supervisor is authorized and directed to sign the Agreement governing the parties' respective rights and obligations concerning the operation of the market.

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE TOWN OF WEST SENECA, NEW YORK  
AND  
KIRCHMYER MEDIA**

This Memorandum of Agreement ("MOU") entered into this \_\_\_ day of March 2014 between the TOWN OF WEST SENECA, NEW YORK, a municipal corporation having its principal place of business at 1250 Union Road, West Seneca, New York ("TOWN"), and KIRCHMYER MEDIA, LLC, a limited liability company having its principal place of business at 115 Cranwood Drive, West Seneca, New York ("KIRCHMYER").

Recitals:

A. The Town is desirous of sponsoring a weekly seasonal "farmers market" on Town property but wishes to contract with an experienced third-party to manage and market such market on behalf of the Town.

B. Kirchmyer Media, through its principal, Joseph Kirchmyer, is experienced in managing and marketing farmers markets in Western New York and is desirous of serving in such role with respect to the proposed Town farmers market.

NOW, THEREFORE, the parties set forth their agreement as follows:

1. Town General Responsibilities.

- a. The Town agrees to make available an area, approximately 110 feet by 75 feet in size, as depicted on the attached sketch plan, on property owned by the Town at 1250 Union Road, West Seneca, New York, or such other area on the Town's property as the Town may deem appropriate in the case of adverse weather conditions, for the operation of the farmers market every Thursday, commencing May 15, 2014, through September 4, 2014, although excluding June 26, 2014.
- b. The Town shall provide two (2) \_\_ gallon garbage totes and one (1) \_\_ gallon recycling tote for use at the market, and the Town shall be responsible for removing and emptying such totes each week.
- c. The Town agrees to promote the market on its website and on its electronic sign located at the corner of Main Street and Union Road.
- d. At its discretion, the Town may provide picnic tables and/or one or more bike racks on or near the market area.

2. Kirchmyer General Responsibilities.

- a. Kirchmyer shall be responsible for soliciting and registering all vendors and potential sponsors for the market, although the Town reserves the right to veto any vendor or sponsor it deems inappropriate. Without limitation, acceptable vendors for the market would include local farmers, bakeries, craft food producers, butchers, florists, cheese makers, craft ice cream makers, wineries, and craft brewers, and acceptable sponsors include businesses or community groups located in the Town.
- b. Kirchmyer and/or the vendors/sponsors shall be responsible for providing all tables, tents, canopies or other furniture or temporary fixtures necessary for operation of the market, which furniture and fixtures will be removed promptly at the conclusion of the market each week.
- c. Kirchmyer shall be responsible for ensuring that the market area is adequately cleaned up at the conclusion of the market each week, with all garbage and refuse either removed from the premises or properly disposed of with Town-provided garbage and recycling totes.
- d. Kirchmyer shall establish and regularly update a facebook page dedicated to the market, write and distribute weekly press releases and blog entries, schedule and procure weekly market entertainment (non-amplified) and community group participation, and otherwise use his best efforts to advertise and promote the market.

3. Hours of Operation. The hours of operation for the farmers market shall be limited to 4:00 pm to 7:30 pm. Kirchmyer, and any of its officially registered vendors and/or sponsors, shall be granted access to the site of the market beginning at 3:00 pm for set up and until 8:00 pm for cleanup.

4. Rules and Regulations.

- a. The rules and regulations governing the operation of the market are those set forth on the vendor application form annexed hereto as **Appendix B**.
- b. Sponsors who wish to have a physical presence at the market (i.e., setting up one or more tables, tents, etc.) shall be governed by the same rules and regulations as the vendors, as applicable.
- c. Kirchmyer shall be responsible for ensuring that all vendors and sponsors comply with said rules and regulations, as applicable, although the Town reserves the right to demand the removal, and prohibit the return, of any vendor or sponsor who unreasonably fails to abide by such rules and regulations.

5. Collection of Fees, Payment of Costs and Distribution of Income.

- a. The fees charged to vendors will be as set forth on the vendor application form annexed hereto as **Appendix B** and the sponsorship form annexed hereto as **Appendix C**.

- b. Kirchmyer shall be responsible for collecting all fees from approved vendors and sponsors.
  - c. Kirchmyer shall be entitled to retain the first \$4,000 collected in vendor and sponsorship fees and fifty (50) percent of any and all such fees collected beyond \$4,000.
  - d. The Town shall be entitled to, and Kirchmyer agrees to remit to the Town, on or before May 8, 2014, fifty (50) percent of all fees collected in vendor and sponsorship fees beyond \$4,000.
  - e. The Town shall be entitled to, and Kirchmyer agrees to remit to the Town, on or before May 8, 2014, the sum of \$800 as reimbursement for the Town's estimated cost in providing and removing totes and general maintenance concerning the market area.
6. Insurance and Waiver of Liability.
- a. Kirchmyer shall ensure that all vendors, as well as sponsors who wish to maintain a physical presence at the market, provide proof of general liability insurance providing a minimum coverage of \$1 million per occurrence and that the Town and Kirchmyer shall be named as additional insureds, on a primary, non-contributory basis, on such insurance policies.
  - b. Krichmyer shall ensure that all vendors, as well as sponsors who wish to maintain a physical presence at the market, execute an agreement, in a form acceptable to the Town, releasing, indemnifying and holding harmless the Town and its officials and employees from any claim of liability by any vendor or other third-party of damages to person or property related to the operation of the market.

7. Expenses. Each party to this agreement shall be responsible for their own costs and expenses incurred in connection with performance of this agreement.

IN WITNESS WHEREOF, this instrument has been duly executed by the authorized representatives of the parties.

TOWN OF WEST SENECA

By \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

KIRCHMYER MEDIA

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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