

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF  
NEWTON ANGINO COMMUNITY FARM**

This Agreement is made this 2 day of March, 2006, by and between Newton Community Farm, Inc., a nonprofit corporation organized under chapter 180 of the Massachusetts General Laws with a principal place of business at 32 Garland Road, Newton, Massachusetts 02459 (hereinafter "OPERATOR") and the City of Newton, a municipal corporation with an address at 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through the Newton Farm Commission, but without personal liability to its members (hereinafter "CITY").

WHEREAS, in 2005, CITY, purchased an historic farm known as the "Newton Angino Community Farm," which is located at the corner of Nahanton and Winchester Streets (hereinafter "Farm"); and

WHEREAS, CITY has established the Newton Farm Commission and designated it as the municipal agency charged with management of the Farm, as described in Ordinance X-148, dated May 2, 2005; and

WHEREAS, Ordinance X-148 sets out CITY's purposes for operation of the Farm, as follows:

- (1) Making locally-grown produce available to Newton residents and the surrounding community;
- (2) Educating the public about sustainable and ecologically-sound agriculture and environmental practices, including serving as an outdoor classroom for Newton students to learn about locally-grown produce and ecologically-sound agriculture practices; and
- (3) Preserving the historic character and culture of the last working farm in Newton.

WHEREAS, Newton Farm Commission issued a Request for Expression of Interest seeking a qualified non-profit organization to carry out operation of the Farm in accordance with CITY's purposes, and OPERATOR submitted its application, which was approved by the Newton Farm Commission;

NOW THEREFORE, in consideration of the mutual consideration described within, the parties agree as follows:

1. License granted/Operation and Maintenance:

1.1 CITY hereby grants to OPERATOR a license, pursuant to the terms set out herein, to operate and maintain the premises known as Angino Community Farm (hereinafter "Farm"), a property with a street address of 303 Nahanton Street, Newton, consisting of 2.23 acres more or less, including the existing buildings thereon, subject to the provisions of this Agreement.

1.2 OPERATOR shall be responsible for operating and maintaining Farm for the benefit of the CITY, as further set out herein. OPERATOR shall maintain and preserve the historic landscape of the Farm; grow produce for the citizens of Newton and surrounding communities; provide educational programs for children and adults; and use sustainable methods for operations.

1.3 OPERATOR shall carry out all operations and maintenance in accordance with the terms of its Application to Operate the Newton Community Angino Farm (hereinafter "Application"), dated October 31, 2005, consisting of 22 pages, a copy of which is attached and incorporated as part of this Agreement, provided however that in the event of any inconsistency between the Application and the terms expressly set out in this Agreement, the terms of this Agreement shall govern.

## 2. Term and Consideration:

2.1 The term of this Agreement shall commence on March 2, 2006 and shall terminate on March, 2, 2009.

2.2 The parties may agree to extend the term for two additional years. Such extension(s) may be made either as 1) one or two successive one-year periods (March 2, 2009 to March 2, 2010, and March 2, 2010 to March 2, 2011), or 2) a two-year period (March 2, 2009 to March 2, 2011), as agreed by the parties.

2.3 In any event, the total term of this Agreement, including the base term described in paragraph 2.1 and the terms under the options, may not exceed a total of five years. CITY's decision whether to exercise each option shall be based on its determination of the best interests of the Farm. In order to exercise such options, CITY will notify OPERATOR no later than 90 days prior to the termination of this Agreement.

## 3. Business Plan:

3.1 Each year while this Agreement is in effect, OPERATOR shall provide the Newton Farm Commission with an annual Business Plan for the Farm, in accordance with the following schedule:

For the first year of operations: within three weeks of execution of this Agreement; and

For each year thereafter: no later than the Monday following Thanksgiving.

3.2 Each such Business Plan shall set out detailed descriptions of OPERATOR's plans for the year, consistent with the provisions of this Agreement, including the following elements:

Financial Plan;

Farm Operations;

Educational programs;

Community outreach

Building use, projected maintenance and improvements;

Fundraising targets and methods.

3.3 Beginning with the Business Plan for Calendar year 2007, each such Business Plan also shall include OPERATOR's evaluation of the outcome of the previous year, relative to the applicable Business Plan.

3.4 Upon receipt of each such Business Plan, Newton Farm Commission shall promptly review the terms. As part of such review, OPERATOR shall make an oral presentation at a Newton Farm Commission meeting. CITY shall determine whether to accept the Business Plan as submitted by vote of the Newton Farm Commission. Except for the first year of operations, such vote shall take place no later than January 15 following submittal of the Business Plan. For the first year of operations, the schedule for the vote shall provide a comparable period of time for the Newton Farm Commission to vote on the Business Plan.

3.5 In the event that Newton Farm Commission does not accept such Business Plan, Newton Farm Commission shall identify with specificity the aspects of the Business Plan that are not acceptable. In the event that the Business Plan is not accepted as submitted, the parties shall negotiate in good faith toward a mutually agreeable Business Plan. As part of such a negotiation, the parties shall seek out and consider input from respected organizations and individuals having expertise in Massachusetts agriculture and community farming.

3.6 Once the Newton Farm Commission has accepted a Business Plan, OPERATOR shall carry out all operations and activities relative to the Farm in accordance with the terms of the then-current accepted Business Plan; and the accepted Business Plan shall continue in effect until the parties have reached agreement concerning a subsequent Business Plan. While a Business Plan is in effect, the OPERATOR may make minor changes in operations and/or activities, so long as a) such changes do not substantially deviate from the terms of the accepted Business Plan and b) OPERATOR gives prompt written notice of such changes to the Newton Farm Commission.

3.7 Notwithstanding these procedures for submission and approval of annual Business Plans, the parties may agree to modify a Business Plan at any time during the term of the Agreement.

#### 4. Farm Operations:

4.1 OPERATOR shall be responsible for planning, planting and harvesting of crops. The types of crops planted shall be at the discretion of the OPERATOR so long as they consist of a mix of crops of the type customarily used by residential households.

4.2 OPERATOR shall make all reasonable efforts to comply with the standards for organic processes outlined by the Baystate Organic Certifiers Certification Program.

4.3 OPERATOR shall actively carry out farming at the Farm in a manner that fully employs and utilizes Farm's land. On a year-round basis OPERATOR must utilize practices that prevent soil erosion and deterioration.

4.4 The crops and landscape must be tended, cultivated, weeded, and watered throughout the year, as needed, in order to maintain crop production and a tidy appearance throughout the Farm.

OPERATOR shall maintain the vegetation along the roadside for appearance and to maintain sight lines for traffic traveling on streets adjacent to the Farm.

4.5 OPERATOR shall carry out farming operations in a manner that demonstrates the link between the production of crops and consumption by the community. As part of the community relationship, OPERATOR shall sell Farm-grown crops to the general public; and OPERATOR may use a "share system" by which the residents of Newton will be able to pre-purchase shares in the season's harvest. OPERATOR may donate a portion of its crops to local shelters or food banks.

4.6 Unless permission is given by Newton Farm Commission, OPERATOR may not keep or use farm animals at the Farm, provided that nothing herein shall prohibit OPERATOR from maintaining beehives or keeping domestic animals.

## 5. Education

The OPERATOR shall develop programs to educate students and persons of all ages about the Farm and agriculture in general.

## 6. Community Outreach

6.1 OPERATOR shall conduct outreach to inform the Newton community of the presence of the Farm and any special activities thereon. The OPERATOR shall also inform the community of any educational programs that are open to the public.

6.2 The OPERATOR shall set up and maintain a website to describe the Farm, ongoing programs, educational programs and special events.

## 7. Buildings

7.1 OPERATOR may use the existing buildings for all purposes in connection with responsible and proper operation of the Farm.

7.2 CITY shall deliver the farmhouse vacant and in habitable condition, within the meaning of the Massachusetts Sanitary Code, no later than March 2, 2006, and the barn, in structurally sound condition, to OPERATOR no later than April 30, 2006. Prior to delivery, CITY shall complete the following work:

- i. Roof repairs on barn (patch holes);
- ii. Barn structural repair - install 6" by 6" post, as per structural engineer's sketch.
- iii. Electrical work -
  - Re-wire floodlight to operate independently;
  - Install outlet at rear of house;
  - Review of barn wiring and potential upgrade of electric service to barn

The OPERATOR shall have the right to inspect the farmhouse and the barn 72 hours prior to the date(s) of delivery hereunder.

7.3 OPERATOR shall arrange for and maintain occupancy of the farmhouse on a regular basis. Occupancy may be by OPERATOR's farm personnel or a watchperson. Occupancy by any other persons shall be subject to prior approval by the CITY.

7.4 OPERATOR shall make good or pay for the full amount of any damage or loss to the CITY-owned buildings and/or personal property which OPERATOR causes, in whole or in part, either by act or omission, regardless of negligence, during the term of this Agreement.

7.5 OPERATOR shall budget a reasonable amount for ordinary maintenance, care and repair of the existing CITY-owned buildings and site. OPERATOR shall coordinate with the Commissioner of Public Buildings and other agencies of the CITY concerning maintenance tasks in order to carry out the necessary in accordance with the bid laws and other requirements of the public purchase laws.

7.6 OPERATOR may not make alterations to the CITY-owned buildings except upon written approval of the CITY. Interior painting shall not be considered an alteration UNLESS the paint color is visibly different from the prior color.

7.7 Upon approval by the Newton Farm Commission, OPERATOR may install and maintain temporary structures during the term of this Agreement. Ownership of the structures shall be in the OPERATOR.

7.8 The parties acknowledge the requirements of Ordinance section 2-362 relative to any changes to the exterior of structures and proposed new structures, including the requirement for review by the Newton Historical Commission.

7.9 The parties acknowledge that OPERATOR may apply for grant funding to benefit the Farm. In such event, CITY shall cooperate to the fullest extent possible consistent with all CITY policies and ordinances.

## 8 Fundraising/Capital Improvements

8.1 OPERATOR shall engage in fundraising in order to raise revenue to operate and maintain the Farm.

8.2 CITY may make capital improvements to the site, provided that during the term of this Agreement, any such improvements that would affect OPERATOR's operations under this Agreement will be subject to the OPERATOR's input and approval.

## 9. Utilities:

9.1 OPERATOR shall be responsible for all utility expenses such as water, sewer, electricity, gas, oil, telephone, cable television that are required or provided at the Farm.

9.2 CITY shall provide trash collection in accordance with CITY's ordinances and rules concerning residential trash collection.

9.3 Snow removal for the Farm's paved areas shall be the responsibility of the OPERATOR.

10. Insurance and Indemnification:

10.1 During the term of this Agreement, OPERATOR shall procure and maintain insurance policies written by established insurance carriers subject to the CITY's reasonable approval, in types and amounts as follows:

Comprehensive General Liability insurance, including Personal Liability and Products/Completed Operations. The City shall be named as Additional Insured on such CGL policy.

\* Liability limits no less than \$1,000,000 Combined Single Limit

Building Insurance

\* Fire and extended insurance coverage to protect against risk

Workers' Compensation covering OPERATOR's employees (if any)

\* Statutory limits

10.2 OPERATOR shall defend, indemnify and hold harmless CITY, its agents and employees from and against all claims, damages, loss and expenses, including attorney's fees, rising out of, or resulting from, the performance of the work called for under this contract, provided that any such claim, damage, loss or expense: (1) Is attributable to bodily injury, sickness, disease, death, or any injury to, or destruction of, tangible property, including the loss of use resulting therefrom, and; (2) Is caused, in whole or in part, by any act or omission of the OPERATOR, anyone directly or indirectly employed by the OPERATOR, or anyone for whose acts the OPERATOR may be liable, regardless of whether or not it is caused in part by the partly indemnified hereunder.

11 Compliance with laws:

11.1 In all matters concerning Farm, OPERATOR and CITY shall be subject to the provisions of Ordinance X-148.

11.2 OPERATOR and CITY agree to conduct all activities and operations at the FARM in accordance with the Conservation Restriction dated April 25, 2005, held by Newton Conservators, Inc.

11.3 OPERATOR shall comply with all applicable laws, ordinances, regulations and codes of federal, state and local government in all matters concerning Farm.

11.4 Nothing contained herein shall be construed as a waiver or variance from applicable ordinances and laws affecting the Farm.

12. Access by CITY

12.1 The Newton Farm Commission and its employees and agents shall have reasonable access to the grounds.

12.2 Employees and agents of CITY's Department of Public Buildings shall have reasonable access to Farm, including the interior of buildings, upon prior notice, in writing or by telephone, to a person designated by the OPERATOR, provided however that CITY's representatives shall be entitled to enter the Farm and buildings, without prior notice, in order to respond to emergency conditions affecting health or safety.

12.3 In the event that OPERATOR abandons the Farm, CITY shall be entitled to gain access to the Farm's grounds and buildings and to take all measures that CITY, in the exercise of reasonable judgment, determines to be appropriate to protect the property and public safety.

13. Books and records:

OPERATOR shall provide CITY with financial reports as required by Ordinance section 3-361.

14. Termination:

14.1 Either party may terminate the Agreement in the event that the OPERATOR, after expending reasonable time and effort, is unable to attain federal tax exempt status pursuant to the United States Code section 501(c)(3), by December 31, 2006.

14.2 In the event the Farm is not managed in a manner deemed by the Newton Farm Commission to be in accordance with the terms and conditions of this Agreement, the CITY shall have the right to cancel this contract upon 45 days notice in writing to the OPERATOR, setting forth with specificity what actions or non-actions have constituted the breach of contract. In the event the OPERATOR fails to cure the default within the time set forth in section 15, the termination of this Contract shall be automatically effective without further notice to the OPERATOR.

14.3 In the event the CITY fails to uphold its obligations pursuant to this Agreement, the OPERATOR shall have the right to cancel this Agreement upon 45 days notice in writing to the CITY setting forth with specificity what actions or non-actions have constituted the breach of contract. In the event the CITY fails to cure the default within the time set forth in section 15, the termination of this Contract shall be automatically effective without further notice to the CITY.

14.4 Either party may terminate this Agreement in the event the OPERATOR incurs any unforeseen major financial difficulties that cannot be resolved by OPERATOR and CITY.

15. Default:

Each of the following shall be deemed an event of default, for which this Contract may be terminated pursuant to section 14.

If the OPERATOR fails to cure a material breach in the performance or observance of any term, covenant or condition of this Contract within 30 days after notice thereof, or, if such breach is not capable of being completely cured or remedied within said 30 days, if the OPERATOR shall not have diligently commencing curing such default within said 30 days and shall not thereafter with reasonable diligence and in good faith proceed to remedy such default;

If the OPERATOR abandons the premises;

If the CITY fails to cure a material breach in the performance or observance of any term, covenant or condition of this Contract within 30 days after notice thereof, or, if such breach is not capable of being completely cured or remedied within said 30 days, if the CITY shall not have diligently commencing curing such default within said 30 days and shall not thereafter with reasonable diligence and in good faith proceed to remedy such default.

16. Miscellaneous:

16.1 Assignment. The OPERATOR shall not assign its rights or duties under this Contract to another person or party without the express written consent of the CITY.

16.2 The OPERATOR shall have the right to hire employees and enter into contracts with persons or companies to further any of the OPERATOR's obligations under this Contract. The OPERATOR shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, or sexual orientation and shall comply with all local, state and federal laws and regulations pertaining to non-discrimination and equal opportunity in the areas of employment and subcontracting.

16.3 The OPERATOR shall attend monthly CITY meetings and report on the status of the Farm. If the OPERATOR is unable to attend the meeting, it shall submit a written report prior to the meeting.

16.4 Non Waiver of Defaults: Waiver by the CITY of any breach by the OPERATOR of any term, covenant or condition herein shall not operate as any waiver of any subsequent breach.

16.5 Force Majeure: Neither the CITY nor the OPERATOR shall be deemed in breach of this Contract if it is prevented from performing any of the obligations herein by reason of Acts of God, acts of the public enemy, acts of superior governmental authority, strikes of labor disputes, floods, riots, rebellion, sabotage, or any similar other circumstances not within its reasonable control.

16.6 Liens: The OPERATOR shall keep the Farm and any improvements thereon free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by the OPERATOR, its employees, agents, contractors, and the OPERATOR agrees to reimburse the CITY and the City of Newton for any attorney's fees incurred in defense of proceedings to enforce or foreclose such liens.

16.7 Notices: Except as provided in section 12, all notices required or permitted under this Contract shall be in writing and shall be sent registered or certified mail, postage prepaid, or delivered by hand --

To the CITY:

With copies to each of the following:

Newton Farm Commission	Mayor	City Solicitor
c/o Planning Department	City of Newton	City of Newton
1000 Commonwealth Avenue	1000 Commonwealth Avenue	1000 Commonwealth Avenue
Newton, Massachusetts 02459	Newton, Massachusetts 02459	Newton, Massachusetts 02459

To Operator:

Newton Community Farm, Inc.  
32 Garland Road  
Newton, MA 02459

16.8 Entire Agreement: This Agreement constitutes the entire agreement of the parties hereto and may not be altered, amended or modified except by an agreement in writing, signed by all the parties hereto and specifically referring to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in five originals as of March 2, 2006.

NEWTON COMMUNITY FARM, INC.

By: [Signature]  
Title: President

CITY OF NEWTON

By: [Signature]  
Peter K. Lewenberg, Chair  
Newton Farm Commission

Approved as to legal form and character:

[Signature]  
City Solicitor

APPROVED:

[Signature]  
David B. Cohen, Mayor

**AMENDMENT TO AGREEMENT FOR THE OPERATION AND MAINTENANCE OF  
NEWTON ANGINO COMMUNITY FARM**

This Amendment #1 is entered into this 7 day of December, 2006 by and between Newton Community Farm, Inc., a nonprofit corporation organized under chapter 180 of the Massachusetts General Laws with a principal place of business at 32 Garland Road, Newton, Massachusetts 02459 (hereinafter "OPERATOR") and the City of Newton, a municipal corporation with an address at 1000 Commonwealth Avenue, Newton, Massachusetts 02459, acting by and through the Newton Farm Commission, but without personal liability to its members (hereinafter "CITY");

WHEREAS, the parties entered into *Agreement for the Operation and Maintenance of Newton Angino Community Farm*, (hereinafter "AGREEMENT") dated March 2, 2006; and

WHEREAS, AGREEMENT set out a schedule for the OPERATOR's submittal of an annual Business Plan, and the CITY's review thereof, which the parties have now agreed to modify;

NOW THEREFORE, the parties agree to amend AGREEMENT as described below:

1. Paragraph 3.1: Strike the following words: "For each year thereafter: no later than the Monday following Thanksgiving." and insert in their place, "For each year thereafter: no later than the date of the Commission's regularly scheduled January meeting."
2. Paragraph 3.4: Strike the following sentence: "Except for the first year of operations, such vote shall take place no later than January 15 following submittal of the Business Plan." and insert in their place "Except for the first year of operations, such vote shall take place no later than February 28th following submittal."
3. Except as modified herein, all other terms and provisions of AGREEMENT, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment #1 in five originals.

NEWTON COMMUNITY FARM, INC.

By: [Signature]  
Title: President

CITY OF NEWTON

By: [Signature]  
Peter K. Lewenberg, Chair  
Newton Farm Commission

Approved as to legal form and character:

[Signature]  
Assoc. City Solicitor

APPROVED:

[Signature]  
David B. Cohen, Mayor

**CERTIFICATE OF AUTHORITY - CORPORATE**

1. I hereby certify that I am the Clerk/Secretary of Newton Community Farm, Inc.  
(insert full name of Corporation)
2. corporation, and that Jon Regosin  
(insert the name of officer who signed the **contract**)
3. is the duly elected President  
(insert the title of the officer in line 2)
4. of said corporation, and that on 12/14/06  
(insert a date that is **ON OR BEFORE** the date the officer signed the **contract**.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. Jon Regosin the President  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: Rebekah Smillie AFFIX CORPORATE  
SEAL HERE  
(Signature of **Clerk or Secretary**)\*
7. Name: Rebekah Smillie  
(Please print or type name in line 6)\*
8. Date: 12/14/06  
(insert a date that is **ON OR AFTER** the date the officer signed the **contract**.)

\* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.