

STATE OF NEW YORK · DEPARTMENT OF AGRICULTURE AND MARKETS
WIC Vegetables and Fruits Check Program at Farmers' Markets

FARMER AGREEMENT

AGREEMENT BETWEEN _____ D/B/A
_____ (THE FARMER) AND THE NEW YORK
STATE DEPARTMENT OF AGRICULTURE AND MARKETS (DEPARTMENT),
ACTING AS AGENT FOR THE DEPARTMENT OF HEALTH

WHEREAS, pursuant to an Memorandum of Understanding with the New York State Department of Health, the Department is authorized to select and enroll farmers who are currently registered for and meet all of the requirements of the New York State Farmers' Market Nutrition Program (FMNP) administered by the Department for participation in the New York State WIC Program (the WIC Program) as an authorized farmer who may accept and redeem WIC checks for vegetables and fruits; and

WHEREAS the Farmer is currently registered for and meets all of the requirements of the FMNP and desires to participate in the New York State WIC Program (the WIC Program) as an authorized farmer who may accept and redeem WIC checks for vegetables and fruits;

NOW THEREFORE, the **Department** and the **Farmer** agree as follows:

1. This agreement is entered into for a three-year term beginning _____, 20____ and ending _____, 20_____.
2. To be eligible to participate in the WIC program the Farmer must be registered for and meet all of the requirements of the FMNP for the term of this Agreement.
3. The Farmer agrees to provide the market sponsor with written evidence of his current status as a bona fide farmer in the form of a current year "crop plan" signed by the Farmer listing the fruits and vegetables the Farmer intends to grow and sell at the market in exchange for WIC checks for vegetables and fruits. The crop plan will list the acreage or row/feet and row feet along with any fruits and vegetables being purchased by the farmer for resale and the name of the entity from which those products are purchased. The Farmer agrees to submit to an onsite inspection to confirm the information contained in the crop plan.
4. The Farmer may accept WIC checks for fresh vegetables and fruits only from the WIC participant/ parent/guardian/caretaker/proxy herein referred to as the Participant and only at the location(s) listed on the accompanying Farmer Application Form. The Farmer may not accept WIC checks for vegetables and fruits at any other location(s) or any checks that have been redeemed by any other individual, farmer or vendor. All checks must be deposited by the Farmer, within 60 days from the NOT GOOD BEFORE date on the WIC check, directly into the bank account name and number listed in paragraph #5. The Farmer may not assign or transfer WIC checks for vegetables and fruits.
5. The Farmer's sole authorized Bank of Deposit and account number for deposit of all WIC checks is

Bank Branch Name

Farmer's Account Number

The Farmer has included a completed "Bank Designation Form" and a VOIDED CHECK with the routing number at the time of application to provide information about their authorized Bank of Deposit and account number for deposit of all WIC checks for Vegetables and Fruits. Any change in the designation of the sole Bank of Deposit account must be in writing to the Department at least thirty days before the change takes place.

6. The Farmer shall be responsible for all actions of, officers, managers, agents and employees, which are contrary to this contract.
7. This agreement does not constitute a license or property interest. If the Farmer wishes to continue to be authorized beyond the period of this agreement, the Farmer must reapply for authorization. If the Farmer is disqualified, the Farmer will have to reapply to be authorized after the disqualification period is over. In all cases, the Farmer's new application will be subject to the Department's farmer selection criteria in effect at the time of the reapplication.
8. This agreement is non-transferable. The death of the Farmer, any change in ownership, the sale or lease of the business or invoking of the use of power of attorney by the Farmer shall result in the termination of this agreement. The Farmer agrees to notify the Department in writing 30 days in advance of any change in ownership or of a planned cessation of operations, so that termination of this agreement can proceed smoothly. An unanticipated cessation of operations (e.g., damage to business from fire) must be reported to the Department as soon as is feasible.
9. This agreement shall be effective after signature by the authorized Department representative and issuance of a FMNP number stamp by the Department, subject to the availability of Federal monies for the purposes herein stated.
10. In the event of a termination or disqualification from the WIC Program the Farmer must surrender to the Department his/her FMNP stamp within fifteen days of termination or disqualification and any additional Department-issued material including the WIC sign. The Farmer shall cease accepting WIC checks for vegetables and fruits as of the effective date of the termination or disqualification.
11. Farmers must not discriminate against WIC customers in price, quality or service or establish separate displays of fresh vegetables and fruits designated solely for WIC customers. Farmers must offer fresh vegetables and fruits included on the New York State WIC Program Acceptable Foods List for Vegetables and Fruits Checks ("Foods Card") to WIC participants at the same price or less than the price charged to non-WIC customers.
12. The Department shall provide all Farmers with a list(s) of New York State WIC Program acceptable vegetables and fruits. The list shall include all fresh vegetable and fruit items that may be provided to WIC participants. The list shall be subject to change at the discretion of the New York State Department of Health (herein referred to as the Department of Health). All changes shall be effected by re-issuance of the New York State WIC Program "Foods Card".

13. Only fresh vegetables and fruits included on the “Foods Card” may be purchased with WIC checks for vegetables and fruits, Fresh vegetables and fruits purchased with WIC checks need not be locally grown so long as a minimum of 50 percent of the vegetables and fruits offered for sale each market day are grown by the Farmer.
14. The Farmer shall display a sign or sign(s) visible to everyone indicating that WIC checks for vegetables and fruits are accepted by the Farmer.
15. The Farmer shall mark all WIC eligible fresh vegetables and fruits with the price charged for the product to the general public or shall prominently display the price of the food near the location of the produce in clear view of customers and in a manner that clearly identifies the price of the specific vegetables and/or fruits. The Farmer shall not collect sales tax on fresh vegetables and fruits purchased with WIC checks.
16. If the purchase amount of the vegetables and fruits exceeds the “Not to Exceed” (NTE) amount on the check, the Farmer shall ask the Participant if they want to pay the difference with cash or other forms of payment/benefits the Farmer is able to process. When the Participant chooses to pay the difference with cash or other forms of payment/benefits the Farmer is able to process, any amount over the NTE amount is allowed. A Participant may choose not to pay the difference when the purchase amount exceeds the NTE amount on the check. In these instances, the Farmer shall ask the Participant to choose less expensive items or put something back so the purchase amount is at or below the NTE amount on the WIC check for vegetables and fruits. None of the items may be defective or spoiled.
17. The Farmer or the Department may terminate this agreement during the agreement period for cause by giving 15 days written notice to the other party of its intention and reason for termination. Cause for termination may include but not be limited to: (1) a conflict of interest between the Farmer and the Department as defined in State or local laws, regulations or policies; (2) failure to comply with Farmer selection criteria throughout the agreement period including any changes to the criteria; (3) the events set forth in paragraph 43 of this agreement; (4) any violations of this agreement or applicable WIC regulations. The Farmer may be reassessed at any time during the agreement period and terminated if the Farmer fails to meet the current farmer selection criteria.
18. In the event that a Farmer charges a WIC participant more for vegetables and fruits than non-WIC customers, more than the posted price or for foods not received by the participant, the Department of Health has the right to a refund for the redeemed amount of the check. The Farmer agrees that the Department of Health may automatically debit the Farmer’s bank account listed in item #5 of this agreement to collect funds provided that the Department of Health simultaneously notifies the Farmer that the debit has occurred and of the right to request, by submitting an acceptable justification in writing, the removal of debits believed to be erroneous. The Farmer agrees that the Department of Health may automatically offset payments to the Farmer by the amount of refunds due to the Department of Health provided that the Department of Health simultaneously notifies the Farmer that the offset has occurred and of the right to request, by submitting an acceptable justification in writing, the return of offsets believed to be erroneous.

19. The Department of Health may delay or deny payment to the Farmer for WIC vegetable and fruit checks redeemed in violation of any item of this agreement. For the purpose of complying with a levy, lien or restraining notice served upon the Department of Health, the Department of Health may deny payment to the Farmer for WIC vegetables and fruits checks redeemed or may demand refunds for payments already made. The Department of Health may demand refunds for payments already made on improperly negotiated WIC checks for vegetables and fruits. The Farmer agrees that the Department of Health may automatically debit the Farmer's bank account listed in item #5 of this agreement to collect refunds provided that the Department of Health simultaneously notifies the Farmer that the debit has occurred and of the right to request, by submitting an acceptable justification in writing, the removal of debits believed to be erroneous. The Farmer agrees that the Department of Health may automatically offset payments to the farmer by the amount of refunds due to the Department of Health provided that the Department of Health simultaneously notifies the farmer that the offset has occurred and of the right to request, by submitting an acceptable justification in writing, the return of offsets believed to be erroneous.
20. The Farmer shall not provide cash or contraband in exchange for WIC checks for vegetables and fruits. No WIC transaction will involve the transfer of cash either to or from the WIC Participant unless the Participant chooses to pay the difference with cash or other forms of payment/benefits the Farmer is able to process when the purchase amount of the vegetables and fruits exceeds the "Not To Exceed" (NTE) amount on the check. The Farmer shall accept cash and other forms of payment/benefits they are able to process from the Participant if the Participant chooses to pay the difference. Change may only be provided when the Participant chooses to pay the difference with cash or debit/credit tokens. The Farmer shall not provide change to the Participant if the purchase amount of the vegetables and fruits is less than the NTE amount on the check. The Farmer will ensure that the Participant does not return WIC acceptable vegetables and fruits items in exchange for cash or other non-identical merchandise.
21. The Farmer shall not issue the WIC participant any document such as rain check purporting to give the WIC participant the right to purchase a particular WIC eligible vegetable or fruit item later than the time the WIC check is redeemed. The Farmer shall not issue credit to the WIC participant giving the participant the right to receive WIC-approved or non-WIC approved products at a later point in time in exchange for WIC checks for vegetables and fruits at the present time.
22. The Farmer shall not seek restitution from the Participant for WIC checks not paid, partially or in full, by the Department of Health.
23. The Farmer shall ensure that the actual price of the items purchased is entered on the WIC check for vegetables and fruits prior to the Participant signing the check. The Farmer must ensure that the amount entered in the "Pay Exactly" box does not exceed the "Not to Exceed" (NTE) amount on the check. If the Participant chooses to pay the difference (with cash or other forms of payment/benefits the Farmer is able to process) when the purchase amount of the vegetables and fruits exceeds the NTE amount on the check, the amount written in the "Pay Exactly" box must match the NTE amount on the check, not the full purchase amount.

24. The Farmer shall obtain at the time of the transaction and in the presence of the cashier the required signature from the WIC Participant on the WIC check for vegetables and fruits. The Farmer shall verify the signature against the WIC ID for each check presented by the participant.
25. The Farmer shall ask the WIC participant for the WIC ID card when accepting a WIC check for vegetables and fruits. The Farmer shall not ask the WIC participant for address, telephone number, or any identification other than the WIC ID card when accepting the WIC check for vegetables and fruits.
26. The Farmer shall accept WIC checks for vegetables and fruits up to and including 30 days past the NOT GOOD BEFORE date, and agrees not to accept WIC checks for vegetables and fruits more than 30 days past the NOT GOOD BEFORE date as indicated on the WIC check.
27. The Farmer shall not accept WIC checks for vegetables and fruits, which have a NOT GOOD BEFORE date later than the date on which they are being presented to the Farmer.
28. The Farmer shall stamp/endorse all WIC checks for vegetables and fruits in the space provided on the face of the WIC check with the FMNP stamp issued to the Farmer by the Department prior to depositing the check in the specific bank account contained in paragraph #5.
29. Prior to deposit, the Farmer shall stamp/endorse the backs of all WIC checks for vegetables and fruits with the Farmer's sole authorized bank of deposit and account number. WIC checks for vegetables and fruits not properly endorsed may be rejected by the payor bank.
30. The Department of Health will reimburse Farmers for exception checks in accordance with the WIC Returned Check or Check Reimbursement Policy contained in the WIC Farmer Handbook.
31. The Farmer agrees that at least one representative of the Farmer must participate in initial and annual interactive training thereafter (or more frequently as required by the Department) on WIC program rules/policies regarding the handling and redemption of WIC checks for vegetables and fruits. The Farmer must inform and train their staff on WIC procedures.
32. The Farmer shall submit to periodic unannounced onsite visits by the Department to review the Farmer's participation in the WIC Program with regard to accepting and redeeming WIC checks for vegetables and fruits. The Farmer shall allow unobstructed examination of all WIC checks and WIC Program related records on the premises by the Department.

The Farmer shall maintain for three years for inspection by the Department all applicable inventory and sales records included for tax reporting purposes. The Farmer authorizes all other entities related to the Farmer's WIC business activities related to the sale of vegetables and fruits items (i.e., bank) to release information relevant to the Farmer's WIC Program participation to representatives of the Department or Federal agency. Federal Agency refers to the United States Department of Agriculture (USDA) or the Comptroller General of the United States.

33. In accordance with Federal law and U.S. Department of Agriculture policy, the Farmer is prohibited from discriminating on the basis of race, color, national origin, sex age or disability. USDA is an equal opportunity employer and provider. A participant complaining of

discrimination on the basis of race, color, national origin sex or disability must be provided the following directions regarding filing a complaint: write to USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). The New York State Human Rights Law also prohibits discrimination based on race, color, national origin, sex, age or disability; in addition, New York State law prohibits discrimination based on creed and marital status. Participants who believe they have been discriminated against based on New York State Human Rights Law must be provided the following directions regarding filing a complaint: write to the WIC Program Director, New York State Department of Health, Division of Nutrition, Albany, NY 12204-2719, or call the New York State Growing up Healthy Hotline at 1-800-522-5006.

34. The Farmer agrees to provide to WIC participants the same courtesies provided to other customers. This includes the opportunities to take advantage of sales promotions by the Farmer or Farmers' Market.
35. The Farmer shall keep all information on WIC Participants confidential and agrees to abide by all the rules of Federal and State agencies governing the WIC Program.
36. Each party shall adhere to such requirements or obligations that are imposed by this agreement. Each party shall adhere to such requirements or obligations as may be imposed by statute, regulation, policies and procedures governing the program or by the appropriate State and Federal authority, including requirements and obligations imposed subsequent to the beginning date of this agreement.
37. A Farmer who commits fraud or abuse of the WIC Program is liable to prosecution under applicable Federal, State or Local laws. Those who have willfully misapplied, stolen or fraudulently obtained program funds will be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1000 or imprisonment for more than one year or both.
38. Any violation of this agreement by the Farmer may result in termination, disqualification and/or civil monetary penalties in accordance with 7 CFR Part 246 and/or 10 NYCRR Subpart 60-1, as set forth in the attached document entitled "New York State WIC Vendor Sanctions" (Attachment1).
39. Disqualification from the New York State Farmers Market Nutrition Program (FMNP) and/or Food Stamp Program will result in automatic disqualification from the Program, which authorizes Farmers to handle and redeem WIC checks for vegetables and fruits. The disqualification from the Program to handle and redeem WIC checks for vegetables and fruits shall be for the same length of time as the disqualification from the FMNP and/or Food Stamp programs, but may begin at a later date than the FMNP and/or Food Stamp Program disqualification and shall not be subject to administrative or judicial review under the WIC Program. Disqualification from the WIC Program may result in reciprocal disqualification from the FMNP and/or Food Stamp program. Such disqualification may not be subject to administrative or judicial review under the FMNP and/or Food Stamp Program.

40. The Farmer has a right to a hearing before an Administrative Law Judge of the Department of Health to contest disqualification or termination from the WIC Program during the period of this agreement. Information regarding the applicable administrative review procedures will be provided at the time that an adverse action is taken by the Department of Health. The Administrative Law Judge cannot recommend or order retroactive participation in the WIC Program as a result of a hearing. Disqualification from the program resulting from the disqualification from the Food Stamp Program shall not be subject to administrative or judicial review.
41. Refusal to accept or failure to claim certified mail – return receipt requested sent from the Department or Department of Health will not require any additional mailings or personal service upon the Farmer or on the part of the Department or Department of Health.
42. The Farmer agrees that all of the information provided by the Farmer contained in the Farmer application and this agreement is accurate. Withholding requested information or providing false information will result in the termination and/or disqualification of the Farmer from the WIC Program.
43. Amendments to this agreement may be made by the Department and/or Department of Health shall be in writing and shall be mailed to the Farmer via certified mail - return receipt requested. Each amendment shall specify a date by which the Farmer must decide whether the Farmer agrees with the amendment. Depositing or cashing a WIC check for vegetables and fruits after that date will constitute agreement to the amendment by the Farmer. If the Farmer is not in agreement with the amendment, the farmer will have cause to initiate termination of the agreement in writing per paragraph 17 of this agreement.

• **For the Farmer:**

Farmer Name (Print)

Farmer Street Address

City

State

Zip Code

Telephone Number

If the Farmer is a Corporation, all corporate officers must be listed below and the president of the corporation or the legally authorized representative must sign the contract.

President

Secretary

Vice President

Treasurer

Signatory must be legally authorized to enter into an agreement on behalf of the farmer. Agents, lessees, and powers of attorney are not acceptable as WIC farmers and may NOT sign the farmer agreement.

I have read and understand my obligations as stated in this agreement.

Farmer Signature

Print Title

Date

State of _____ County of _____ SS: _____

On the _____ day of _____, 20____, before me personally appeared _____, to me known, did duly swear or affirm that he/she resides at _____, that he/she is the sole owner/part owner/corporate officer (circle one) of the farm described herein and that he/she affirms that each statement contained within this application is true.

Notary Public (Please sign and affix stamp)

• **For the NYS Department of Agriculture and Markets:**

NYS Department of Agriculture and Markets Official (Print)

Title

NYS Department of Agriculture and Markets Street Address

City

State

Zip Code

Telephone Number

NYS Department of Agriculture and Markets Official Signature

Date