

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (this "Agreement"), dated as of _____, 2024, is made and entered into by and between the CITY OF BANDERA ("City"), a Texas Municipal Corporation, and Bandera Methodist Church ("BMC"), for the use of a BMC Owned Parking Lot (the "Facility") under the terms and conditions contained in this Agreement and its attached Exhibits. This Agreement is not effective until executed by all necessary representatives of City and BMC, following approval of the City Council.

NOW, THEREFORE, for good, valuable, and mutual consideration, the sufficiency of which is hereby acknowledged, City and BMC agree as follows:

1. License. BMC licenses to the Public, by and through the City, the right to use the BMC Facility identified below for the following purpose and no other:

Facility Requested:	Lots 40 and 41, Block 6, Range X, City of Bandera as described in the plat attached as Exhibit A
License Granted:	Public Parking on the Facility on Monday through Saturday
Fees:	\$500.00 per month during the term of the Agreement

- 1.1 Permitted Use; Compliance with Law. The Public, by and through the City, may use Facility solely for public parking and in accordance with this Agreement's provisions. The use of the Facility for any other purpose is prohibited, unless written permission is first obtained from BMC. BMC shall not grant permission to use the Facility to any other person or organization during the times it is to be available for public parking. This license to use Facility in no way implies surrender of BMC's rights to manage and supervise its property. This Agreement permits use of Facility and does not imply permission to use any other facility or grounds at BMC.

- 1.2 Term. The Public, by and through the City, shall be permitted to use Facility for a period beginning on January 1, 2024, and ending on December 31, 2024. This Agreement shall renew annually unless either party decides to terminate the Agreement as provided for herein.

2. Fees. As consideration under this Agreement for the use of Facility City shall pay BMC \$500.00 monthly, due the first business day of each month which shall be used for the maintenance and upkeep of the Facility.

3. Condition of Facility.

- 3.1 At Delivery. **BMC makes no representation or warranty of any kind (express or implied) regarding the suitability of Facility for any aspect of the intended use. City further acknowledges and agrees that the Facility shall be delivered by BMC to City "as is," "where is" and "with any and all faults," and without any representation or warranty of any kind (express or implied), including, but not limited to, representations and warranties as to merchantability and fitness for the**

use thereof for any particular purpose, and shall be used by the Public at the Public's own risk.

3.2 Destruction, Condemnation or Taking. In the event that the Facility is wholly or partially destroyed either party may elect to terminate this Agreement by written notice to the other party. In the event of any such termination, neither party shall have any liability to the other party. BMC alone shall be entitled to any insurance proceeds or sums paid or payable as damages or compensation on account of any such destruction condemnation, or taking.

4. Insurance. BMC shall be solely responsible for insuring the Facility.

5. Signage. City is authorized to post signage identifying days and times that the Facility is available for public parking.

6. Facility admissions. BMC shall not individually charge members of the public for parking during authorized times.

7. Portable Restroom Facilities. Based upon the projected number of attendees to downtown events, the City reserves the right, at City's sole cost, to provide portable restroom facilities within a portion of the Facility.

8. Miscellaneous.

8.1 Power and Authority; Due Authorization; No Conflict; Enforceability. Each party represents and warrants to the other party that (i) such party has the power and authority to execute, deliver and perform its obligations under this Agreement, (ii) the execution, delivery and performance of this Agreement have been duly authorized by such party and do not and shall not conflict with any agreement or instrument to which it is bound, and (iii) this Agreement constitutes the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms.

8.2 Taxes. BMC shall be solely liable and responsible for all federal, state and local taxes and fees arising in any way in connection with the Facility. In addition, BMC shall be solely responsible and liable for timely filing any and all documentation relating thereto and shall comply with all applicable laws, rules, and regulations regarding the payment of taxes.

8.3 Entire Agreement; Severability; Further Assurances. This Agreement constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, understandings and negotiations. In the event any provision of this Agreement shall be held unenforceable by a court of competent jurisdiction, such unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such unenforceable provision, to the extent of such unenforceability, had not been incorporated herein. Each party shall execute and deliver such further documents and take such further actions as may be required or reasonably requested by the other party to effectuate the purposes of this Agreement.

- 8.4 No Assignment; No Amendment; No Waiver. This Agreement (i) may not be assigned or transferred, in whole or in part, by operation of law or otherwise, by either party without the prior written consent of the other party, and (ii) may not be amended or modified, by course of conduct or otherwise, except in a writing duly executed by both parties. Any waiver of any provision of this Agreement shall be in writing duly executed by the waiving party. The failure or delay by either party to seek redress for any breach or default under this Agreement, or to insist upon the strict performance of any provision of this Agreement, shall not constitute a waiver of any kind, and such party shall retain all available remedies regarding such breach or default.
- 8.5 Governing Law; Jurisdiction and Venue; Attorneys' Fees. This Agreement shall be governed by the laws of the State of Texas (without regard to the conflicts or choice of law principles thereof). The parties irrevocably consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction sitting in Bandera County, Texas, shall be an appropriate and convenient place of venue to resolve any dispute with respect to this Agreement. In the event either party commences any proceeding against the other party with respect to this Agreement, the parties agree that the prevailing party (as determined by the authority before whom such proceeding is adjudicated) shall be entitled to recover reasonable attorneys' fees and costs, in addition to any other relief that may be granted.
- 8.6 Right of Entry. BMC retains the right to enforce all necessary and proper rules of the management and operations of the Facility. A duly authorized representative of the BMC may enter the Facility at any time and on any occasion without any restrictions whatsoever.
- 8.7 Termination. Either party may terminate this Agreement at any time, for any reason, by providing 90 days written notice to the other party.
- 8.8 Notices. Notices will be sent, when required to the parties as follows:
Bandera Methodist Church, P.O. Box 128, Bandera, TX 78003
City of Bandera, P.O. Box 896 Bandera, TX 78003
- 8.9 Audit. Semi-annually the BMC shall show the City a total of all revenue and expenses for the BMC account dedicated to the maintenance and upkeep of the Facility.
- 9.0 Headings; Counterparts. Headings in this Agreement are for convenient reference only and shall not be construed to affect the meaning of any of the provisions. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The parties have duly executed and delivered this Agreement as indicated, with the effective date being the first date written above.

BMC:

Signature: _____

Title: _____

Print Name: _____

Date: _____

CITY:

Signature: _____

Print Name: _____

Title: _____

Date: _____