

CITY OF BANDERA FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (this "Agreement"), dated as of June ____, 2024, is made and entered into by and between the CITY OF BANDERA ("City"), a Texas Municipal Corporation and General Law City, and BANDERA CHAMBER OF COMMERCE ("Licensee"), for the use of a City Owned Facility (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. Until that time, this document merely constitutes Licensee's offer and application to use the Facility. Licensee's application must be accompanied by advance payment of applicable fees in order to be considered. The City will notify Licensee when the application has been accepted, transforming this document into a binding contract.

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

1. License. City licenses to Licensee, and Licensee licenses from City, the right to use the City's Facility identified below for the following purpose and no other:

Facility Requested: Bandera City Park Sections C

Event Description: Circus

- 1.1 Permitted Use; Compliance with Law. Licensee may use Facility solely for the Event 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 the City. Licensee shall not use, or suffer or permit any use of, Facility for any purpose or in any manner other than as contemplated by this Agreement. Permission to use the Facility will not be assigned to any other person or organization. This license to use Facility in no way implies surrender of City'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 City. Licensee, and the employees, subcontractors, agents, representatives, participants, invitees and attendees of Licensee and the Event (whether paid or not), shall comply with all applicable federal, state and local laws, regulations, and ordinances.
- 1.2 Inclusion of Exhibits. **This Agreement incorporates Exhibit "A" (Depiction of Facility). Licensee acknowledges receipt of Exhibits "A" and agrees to be legally bound by the contents of the Exhibit.**
- 1.3 Term. Licensee shall be permitted to use Facility for a period beginning October 12, 2024, at 7:00 a.m. for set up through event on October 12, 2024, until October 13, 2024, at 5:00 a.m. (the "Use Period"). The Use Period shall not be extended for the occupancy or use of Facility or for the installation, storage, or removal of equipment without the prior written permission of the City.
- 1.4 No Firearms or Other Dangerous Objects. Licensee shall ensure that no firearms, or other potentially dangerous weapons or objects are admitted to the Facility.
- 1.5 Amplified Sound. Sound levels will be managed in order not to disturb other park patrons or the surrounding neighborhood. **The use of amplified sound (voice and/or musical instruments) is permitted on a limited basis. The City reserves the right at any time to require individual(s) reserving the Facility to reduce volume levels and/or eliminate all amplified sound as may be considered a nuisance to the adjacent neighborhood.**

2. Fees. There is no fee for the use of Facility by Licensee

2.1 Deposit. There is no deposit required by Licensee.

3. Party Contacts. Any notices required under this Agreement may be given in person or by mail and deemed delivered as of the date of personal delivery, or three (3) business days after postmarking, to the following addresses:

City of Bandera
Attention: City Administrator
511 Main Street
Bandera, TX 78003

4. Condition of Facility.

4.1 At Delivery. **City makes no representation or warranty of any kind (express or implied) regarding the suitability of, or compliance with applicable laws by, Facility, for any aspect of Licensee's intended use. Accordingly, Licensee acknowledges and agrees that Licensee has made an adequate investigation and inspection of Facility and its own determination regarding the suitability thereof for Licensee's intended use. Licensee further acknowledges and agrees that the Facility shall be delivered by City to Licensee "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 Licensee for the Event at Licensee's own risk.**

4.2 Preservation. Licensee, and the employees, subcontractors, agents, representatives, participants, invitees or attendees of Licensee or the Event (whether paid or not), shall not (i) cause or allow to be caused anything that damages, mars or defaces the Facility or other City property or (ii) make or allow to be made any alteration of any kind to the Facility or other City property.

4.3 Damage. Licensee shall return the Facility to City after the Event in the same condition as when received, and shall reimburse City upon demand for any and all costs, expenses, charges or fees incurred in the clean-up, repair or replacement of damage to the Facility or other City property as a result of the acts or omissions of Licensee, or the employees, subcontractors, agents, representatives, participants, invitees or attendees of Licensee or the Event (whether paid or not).

4.4 Destruction, Condemnation or Taking. In the event that the Facility are wholly or partially destroyed, condemned or taken for public use, and either party reasonably believes that the Event should not be held, then such 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, either on account of the unavailability of the Facility or the failure to hold the Event there. City 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, and no part thereof shall accrue or be payable to Licensee.

5. Security. The City will provide security personnel necessary to maintain the Facility in a safe and secure condition. Such security levels shall be solely determined by the City.

6. Insurance. Licensee shall be required to provide a comprehensive public liability and indemnity insurance in an amount not less than \$1,000,000 in the aggregate, which policy or policies shall name City as an additional insured with the term coinciding with the dates of the Term of this Agreement. A certificate of

insurance must be attached to the fully executed Agreement for said Agreement to be considered complete and effective.

7. Advertising of Event. Licensee agrees that all advertising of the Event will be true and accurate. Furthermore, Licensee agrees that all news releases, publicity, material, radio or television announcements, publications or other such public notices issued shall refer to the Facility location only as the "City of Bandera Park".
8. Private Advertising. The City controls the right of all private advertising at the Facility during the event. This right may be passed on to Licensee.
9. Concessions and Vendors. The City controls the right to sell concessions or permit vendors for all Events and may assign such right to Licensee.
10. Event Parking. The City controls all parking for the Facility.
11. Event admissions. The Licensee shall not charge for the event.
12. Electricity and Water. City will not charge for the use of Water and Electricity for the Event.
13. Portable Restroom Facilities. Based upon the projected number of attendees, the City reserves the right to require Licensee, at Licensee's sole cost, to provide portable restroom facilities.
14. Miscellaneous.
 - 14.1 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.
 - 14.2 Taxes. Licensee shall be solely liable and responsible for all federal, state and local taxes and fees arising in any way in connection with the Event or use of Facility. Licensee shall pay in full, prior to delinquency, any such taxes and fees, and such payment shall not be credited against any other amount payable by Licensee to City. In addition, Licensee 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.
 - 14.3 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.
 - 14.4 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.

- 14.5 Survival; Remedies Cumulative. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 6.1 above shall survive any expiration or termination of this Agreement, and each party shall remain obligated to the other party under all provisions of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement. The rights and remedies provided in this Agreement are cumulative in nature and shall be in addition to any such other rights and remedies available at law and in equity.
- 14.6 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.
- 14.7 Right of Entry. City retains the right to enforce all necessary and proper rules of the management and operations of the Facility. A duly authorized representative of the City may enter the Facility at any time and on any occasion without any restrictions whatsoever.
- 14.8 Default. Should Licensee default in the performance of any of the terms and conditions of this Agreement, the City at its option may terminate the same and demand damages or demand specific performances hereof, and any deposit paid by Licensee shall be retained by the City considered as partial payment for liquidated damages. Notwithstanding anything herein to the contrary all obligations and liabilities of the City under this agreement are dependent upon the successful completion of the scheduled Event. If Licensee fails to complete the above scheduled event for any reason within the Licensee's control or responsibility, Licensee agrees at a minimum to the retaining of the deposit.
- 14.9 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.

15. Indemnity

THE UNDERSIGNED DOES INDEMNIFY AND HOLD HARMLESS THE CITY OF BANDERA FROM AND AGAINST ANY AND ALL LOSS, COST (INCLUDING STATUTORY LIABILITY AND LIABILITY UNDER WORKERS COMPENSATION LAWS) IN CONNECTION WITH CLAIMS FOR DAMAGES AS A RESULT OF INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PROPERTY SUSTAINED BY THE INDIVIDUAL(S) USING THE FACILITY OR ANY AND ALL OTHER PERSONS WHICH ARISE FROM, OR IN ANY MANNER GROW OUT OF, ANY ACT OR NEGLECT ON OR ABOUT THE FACILITY BY THE INDIVIDUALS USING THE FACILITY, GUESTS OR INVITEES.

LICENSEE:

Signature: _____

Print Name: _____

Title: _____

Date: _____

CITY:

Signature: _____

Print Name: _____

Title: _____

Date: _____