

**FACILITY USE AGREEMENT  
BETWEEN THE CITY OF COACHELLA  
AND SUPER BAILES, LLC**

This Facility Use Agreement (“Agreement”) is made and entered into as of this 24<sup>th</sup> day of April, 2024 (“Effective Date”) by and between the City of Coachella, a California general law city and municipal corporation (“City”), and Super Bailes, LLC dba Frias Presents, a California limited liability company with its principal place of business at 21601 Balerna, Mission Viejo, CA 92692 (“Permittee”). City and Permittee are sometimes individually referred to herein as “Party” and collectively as “Parties.”

**RECITALS**

A. City is the owner of Rancho Las Flores Park situated in the City of Coachella, California, located at 48-400 Van Buren St, Coachella, CA 92236 (“City’s Property”).

B. Permittee desires, and City is willing to permit Permittee, to use the City’s Property for the purpose of a Latin Music Festival, an outdoor music festival which will include set up and use of a trailer stage (40’W x 40’D x 25’H (Floor to Top of Structure), musical performances, merchandise sales, food and beverage concessions, and use of the public parking lot (“Event”). Permittee desires to use all of the City’s Property for said Event. A copy of the location map and site plan is attached hereto as **Exhibit “A.”**

In consideration of the mutual promises of the Parties set forth herein and other good and valuable consideration, the receipt of which and sufficiency of which is hereby acknowledged, City and Permittee hereby agree as follows:

**TERMS**

1. Facility Use. The City hereby grants to Permittee a temporary, non-exclusive Use Permit (“Permit”) in, on, across, and over the City’s Property for the purpose of permitting the Event. Nothing herein shall be deemed or construed to be a limitation upon the City’s right to use the City’s Property in any manner it deems acceptable. Nothing herein shall be deemed or construed to grant to Permittee any interest in the City’s Property. The Permit shall be subject to the following restrictions:

1.1 Permittee shall not allow more than Four Thousand (4,000) attendees of the Event.

1.2 All outside equipment shall be approved by the City at least 24 hours prior to Event. Equipment includes, but it is not limited to, the trailer stage, tents, temporary flooring, lights, sound, etc.

1.3 Permittee shall provide at least 40 portable/mobile toilets with some that are Americans with Disabilities Act (“ADA”) Accessible in both GA and in VIP areas. Restrooms shall be located within the park site and shall not be located within the parking lot.

1.4 Overnight storage on City’s Property is done at the sole risk of the Permittee.

1.5 Permittee shall contract directly with the Riverside County Sherriff's Department for public safety assistance.

1.6 Permittee shall ensure that event set-up and tear down provides for complete pedestrian and traffic safety.

1.7 Parking

(a) Permittee shall ensure that all vehicles utilize available parking spaces for unloading and loading; no double parking, no parking in red curb or restricted parking areas shall be allowed.

(b) Permittee's vehicles may be driven into/onto all accessible areas of City Property for loading and unloading. Permittee shall insure that other vehicles shall not be driven into/onto areas of the City's Property, other than the parking lot.

1.8 Health and Safety Conditions.

(a) A site plan shall be submitted to the City in PDF format (see Exhibit "A"). Information shall include: Event name and date(s); dimensions of stage, booths, tents, generators, etc.; expected number of attendees; vendor booth locations (specifically identify alcohol sales); identification of any cooking booths using open flame devices; fences; exits; fire hydrant locations.

(b) Permittee shall ensure that the public streets, parking lot lanes, and access roadways shall not be obstructed in any manner including the parking of vehicles that will reduce the fire department access road to a width of less than 20 feet.

(c) Permittee shall ensure no person shall stop, park, or leave standing any vehicle, or place a vendor booth/display, within 15 feet (7.5 feet on either side) of a fire hydrant.

(d) Permittee shall ensure all food vendors utilizing open flame cooking devices (grills, barbeques, stoves, ovens, woks, kettles, deep-fryers, etc., have the appropriate fire extinguisher with a current State Fire Marshal service tag attached (serviced within the past 12 months). A 2A-10B:C minimum rated dry chemical fire extinguisher is required. In addition, any food vendor that deep-fry's food or uses solid fuel for cooking such as charcoal, wood, etc. shall have a "Class K" UL rated 2A:K wet chemical fire extinguisher.

(e) Permittee shall ensure all vendors utilizing open flame devices (LPG heaters, candles, etc.), have the appropriate fire extinguisher with a current State Fire Marshal service tag attached (serviced within the past 12 months). A 2A-10B:C minimum rated dry chemical fire extinguisher is required.

(f) Permittee shall provide City with the California Department of Alcoholic Beverage Control authorization for alcohol sales at the Event.

1.9 Compliance with City and State Codes.

(a) Permittee shall ensure that the Event site plan is at all times in accordance with the site plan approved by the City and Riverside County Fire Department.

(b) Permittee shall ensure that the Event, including all preparation, set-up, and tear down activities, complies with all applicable laws, ordinances, and regulations set forth by City, County, State, and Federal authorities.

(c) Event-related lighting and electrical system installation shall comply with applicable Building Codes.

(d) Permittee shall ensure that any temporary tents installed at the event comply with all Riverside County Fire Department rules and regulations at all times.

(e) Permittee shall ensure any food preparation or sales must adhere to all Riverside County Fire Department and Riverside County Health Department rules and regulations at all times.

(f) Permittee shall not allow any food and beverage concession to operate that does not have approvals from the County of Riverside, Department of Public Health.

1.10 Permittee shall maintain the City Property in a safe, clean and sanitary manner throughout the Event, including placing all garbage, cans, bottles, papers or other refuse in the appropriate receptacles.

1.11 Permittee shall ensure all exterior lighting is oriented, directed, and/or shielded as much as possible so that direct illumination does not infringe onto adjoining properties or onto adjoining streets.

2. Compensation. As consideration for the issuance of this Agreement and Permit, Permittee shall pay to the City Four Dollars (\$4.00) per admission ticket sold (General or VIP) and Two Dollars (\$2.00) per parking pass sold for the Event (“Compensation”). Payment of the Compensation, if applicable, shall be made to City by May 28, 2024 (“Payment Due Date”).

3. Records, Audit, Final Report. Permittee agrees to employ an electronic ticketing and parking pass system, which shall be capable of real time tracking and reporting of sales. City shall have the right to audit the sales records of Permittee with reasonable notice, during normal business hours, to ensure compliance with the financial terms of this Agreement. Permittee is required to provide City with a final sales report, detailing the total number of admission tickets and parking passes sold by or before the Payment Due Date.

4. Term. The term of this Agreement shall commence on the Effective Date and shall terminate on May 20, 2024. The Permit shall commence on May 16, 2024 at 8:00 AM and shall terminate on Monday, May 20, 2024 at 12:00 PM. The Event hours (not including set up and tear down) are as follows: May 18, 2024 at 6:00 PM through May 19, 2024 at 1:00 AM. Event load in and set-up may occur on May 16-17, 2024, between the hours of 8:00 AM and 8:00 PM daily. Event tear-down and load out may occur on May 19-20, 2024 between the hours of 8:00 AM and 8:00 PM on May 19 and between 8:00 AM and 12:00 PM on May 20. By 12:00 PM on May 20, 2024, Permittee shall cease using the City’s Property and shall surrender the City’s Property to the City in substantially the same condition as when received, including placing all garbage, cans, bottles, papers or other refuse in the appropriate receptacles.

5. Relocation of Event. In the event Permittee wishes, or is required by City, to relocate its Event to a location other than the City's Property, such relocation shall be subject to the availability of another location and performed at Permittee's sole cost and expense.

6. Damage to City's Property.

6.1 Permittee, its officers, employees, contractors, subcontractors, agents, and volunteers shall not damage the City's Property or commit waste thereon. Permittee shall, at its sole cost and expense and to the satisfaction of the City, keep the Premises clean and neat in appearance and maintained in the condition as of the Effective Date. Permittee will at all times operate its activities in an effort to prevent inconveniences of noise, parking problems, etc., to surrounding neighbors. Standards of noise, traffic, parking, etc., will comply with the Coachella Municipal Code.

6.2 Upon the cancellation, expiration, or termination of this Agreement, Permittee shall surrender the City's Property in the same condition as received free from hazards and clear of all debris and of all property of Permittee or its officers, employees, contractors, subcontractors, agents, and volunteers. Permittee shall promptly, at its sole cost, repair any and all damage to City's Property and any personal property located thereon caused by Permittee or its officers, employees, contractors, subcontractors, agents, and volunteers. Permittee shall obtain City's prior approval of any party to be used by Permittee to conduct such repair work. If Permittee damages City's Property or any personal property, the final repair costs owed by Permittee shall be determined by the City, and shall be paid by Permittee within five (5) days of City's demand therefor. Permittee's obligations under this Section shall survive the cancellation, expiration, or termination of this Agreement.

7. Indemnification. To the fullest extent permitted by law, Permittee shall defend (with counsel approved by the City), indemnify and hold the City, its elected and appointed officials, officers, employees, agents, and authorized volunteers ("Indemnified Parties") free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, and claims relating to violations of the "ADA" (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Permittee, its officials, officers, employees, subcontractors, consultants or agents in connection with the Permittee's use and occupation of, or the condition of, the City's Property during the term of the Agreement. City shall promptly notify Permittee of any such claim, action, or proceeding against City and the Permittee shall either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for the City's defense of the matter. Permittee's obligations under this Section shall survive the cancellation, expiration, or termination of this Agreement.

8. Insurance. As a condition precedent to the effectiveness of this Agreement and without limiting the indemnity provisions of this Agreement, Permittee shall obtain and maintain in full force and effect at all times that Permittee is occupying or using the City's Property and shall provide City with original certificates of insurance in the following amounts and coverage:

8.1 Commercial General Liability Insurance which affords coverage at least as broad as the latest version of Insurance Services Office "occurrence" Form CG 0001 with minimum limits of at least \$1,000,000 per occurrence for bodily injury, personal injury and property damage.

If written with an aggregate, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be paid in addition to the limits.

8.2 The Indemnified Parties shall be named as additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement. The “Additional Insured Endorsement” shall be on a form similar to Insurance Services Office Endorsement Form CG 2010 and contain no other modifications to the policy.

8.3 The Commercial General Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance.

8.4 The Commercial General Liability Insurance shall not be canceled or the coverage suspended, voided, reduced, or allowed to expire until a thirty (30) day prior written notice of cancellation has been served upon the City except ten (10) days prior written notice shall be allowed for non-payment of premium.

8.5 The Commercial General Liability Insurance shall be obtained from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

9. Waiver of Claims.

9.1 Neither City nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of Permittee, its officers, agents, employees, invitees, Permittees or subcontractors, or their employees, or for any bodily injury or death to such persons, or for any other loss, resulting or arising from the condition of the City's Property or its use by Permittee.

9.2 Permittee fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, (i) for any claim or event relating to the condition of the City's Property or Permittee's use thereof, an (ii) in the event that City exercises its right to suspend, revoke or terminate this Agreement.

9.3 In connection with the foregoing release, Permittee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

9.4 Permittee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being

fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any cancellation or termination of this Agreement.

10. Termination. This Agreement may be terminated by either Party upon breach of any terms herein, with two (2) days written notice to the breaching party, subject to the right of the breaching party to cure the breach within 24 hours. City may immediately terminate this Agreement and the Event shall be immediately discontinued should the Riverside County Fire Marshal determine occupancy, exiting or other safety issues require such action and the City shall not be liable to refund any of the Compensation.

11. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. The terms and conditions of this Agreement may be altered, changed or amended only by written agreement of the Parties hereto. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.

12. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

13. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties. However, Permittee shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

14. Attorney's Fees. Should either Party bring a legal action for the purpose of protecting or enforcing its rights and obligations under this Agreement, the prevailing party shall be entitled, in addition to other relief, to the recovery of its attorney's fees, expenses and costs of suit. The provisions of this Section shall survive the entry of judgment and may be enforced through a separate recovery action.

15. Time of Essence. Time is of the essence for each and every provision of this Agreement.

16. Notices. All notices permitted or required hereunder shall be given to the respective Parties at the following address or at such other address as the respective Parties may provide in writing for this purpose:

City of Coachella  
53990 Enterprise Way,  
Coachella, CA 92236  
Attn: City Manager

Super Bailes, LLC  
21601 Balerma,  
Mission Viejo, CA 92692  
Attn: Elvis Frias

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at the applicable address.

17. Authority to Enter Agreement. Permittee has all requisite power and authority to conduct its business and to execute, deliver and perform this Agreement. Each Party warrants that the

individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each representative party.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the day and year first above written.

CITY OF COACHELLA

SUPER BAILES, LLC

By: \_\_\_\_\_  
Gabriel D. Martin, City Manager

By: \_\_\_\_\_  
Elvis Frias  
Owner

Attest:

By: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT "A"**

**LOCATION MAP AND SITE PLAN**