

## **LAND/FACILITY USE LICENSE AGREEMENT H.E.R.O. / HAMBURG FUN FEST**

THIS AGREEMENT ("Agreement") is entered into by and between Hamburg Township, a Michigan municipal corporation, whose address is 10405 Merrill Road, Hamburg, MI 48139, and (hereinafter the "Township"), and the Hamburg Enhanced Recreation Organization (H.E.R.O.), a Michigan nonprofit corporation, whose address is PO Box 548, Hamburg, MI 48139, (hereinafter "Licensee") for the purposes of use of the Township's Property as described below and as further identified on attached Exhibit A (the "East Park) and Exhibit B (the West Park"), the "Property" or the "Premises."

This License is for three (3) consecutive years (also referred to as event years), 2024, 2025 and, 2026, for dates outlined in the Park Use Application and Release of Liability as submitted by the Licensee. The dates of use of the East Park and West Park are limited to those listed in the Park Use Application and Release of Liability, and shall permit, activities, generally, as set forth in the attached and incorporated as Exhibit C (the "Fun Fest Park Use Application and Release of Liability"). The purpose of the use is for the Hamburg Fun Fest, a festival/carnival function sponsored and operated by Licensee.

Township desires to grant a license for the use of the Premises to the Licensee, and Licensee desires to secure a license to use the Premises, subject to the terms and conditions of this Agreement. The Township grants to and Licensee accepts from the Township the right and privilege to use the premises in the manner set forth below:

1. Licensee shall contribute to Public Safety costs for Police and Fire personnel required for the fireworks shows on Friday and Saturday nights (up to 4 hours each night) charged each event year. The costs shall be calculated upon completion of the event, at a cost not to exceed \$5,000 per event year, and the Licensee shall be sent an invoice outlining those costs for payment within thirty (30) days of receipt of the invoice.
2. Licensee shall pay the Township \$2,500 each year of the agreement for the initial land balancing investment and seeding costs, which took place in 2017, each event year until 50% of the original cost of \$34,710 has been reimbursed. In order to protect this community investment, the Township will maintain the area throughout the year and re-seed annually, as needed.
3. Licensee agrees to repair damage that the festival may cause to the grounds other than land balancing and seeding. Licensee agrees to submit a \$2,000 damage bond to Hamburg Township to be held until repairs are completed.
4. No park use fees will be assessed to Licensee in excess of those outlined in items #1, 2 and 3 above.
5. Licensee has inspected the Premises with the Township and accepts the same in its existing condition. Annual pre-inspections and post-event inspections will be conducted each year with the Licensee.

6. The Premises shall be used for the purpose stated in the H.E.R.O. Park Use Application & Release of Liability (Exhibit C) for the Hamburg Fun Fest for the location, and for the time periods defined (also known as Blackout Dates), no other use is allowed. The Licensee agrees to comply with all terms and conditions set forth in Exhibit C and this Agreement and all other rules and regulations as have been and may be established by the Township relating to the use of the Premises.
7. No alterations or additions shall be made to the premises without the prior written consent of the Township. The Licensee shall furnish and install at its expense any and all additional equipment or fixtures as may be necessary for its intended use as approved by the Township Board. At the conclusion of its use, Licensee shall forthwith remove any and all such fixtures and equipment at its own expense, unless the Licensee desires to donate the fixtures and/or equipment and they are determined to be of benefit to the community and the requirement of their removal is waived in a motion by the Township Board. Such approved fixtures shall be considered in-kind donations.
8. The Licensee, at its expense, shall leave the premises clean and free of all trash and litter associated with the festival/carnival and is responsible for any damage to Township Property, in areas of use as outlined in the Park Use Application and Release of Liability, which occurs during the set-up, hosting or tear-down of event.

The Licensee shall not charge admission or fee to the public over and above what is outlined in the H.E.R.O. / Hamburg Fun Fest Park Use & Release of Liability Application (Exhibit C) without the prior written consent of the Township. Fees associated with festival/carnival operations or to cover the costs associated with festival/carnival activities are included.

9. Persons engaged by the Licensee to provide labor and service shall not be deemed or considered employees, agents or independent contractors of the Township. All third-party vendors must provide proof of General Liability & Worker's Compensation, and are required to include Hamburg Township as Additional Insured. All vendors are subject to inspection by the Hamburg Township Fire Department.
10. The Licensee shall maintain insurance for bodily injury, death, workers compensation and property damage resulting from the Licensee's use of the premises, in accordance with the Township's Park Use Policy, with minimum limits of liability in the amount of \$1,000,000 per occurrence or in other such amounts as may be established by Township Park Use Policy, which may be amended from time to time. The policies shall be endorsed to name the Township as an additional insured on any such policy, and shall provide the Township with thirty (30) days prior notice of cancellation or material change in the policy. Licensee shall provide Township with written verification of any such insurance coverage prior to its use of the premises.

11. Licensee may not implement or enforce any policy on the Premises requiring removal or ejection of members of the public attending the festival. Removal or ejection of attendees may only be in accordance with applicable laws and ordinances, and shall only be undertaken as determined in the discretion of the Township/Police Department in the event of a violation of the law that requires arrest or detention of the attendee in accordance with the law.
12. Licensee shall hold the Township, its agents, officers, employees, contractors and board members harmless from and shall defend and indemnify them from and against any and all liability for injuries to, or death of persons or damage to property arising from the activities of the licensee, its agents, officers, employees, contractors or assigns in connection with this License Agreement.
13. Upon any breach of this agreement by Licensee, Township may terminate this Agreement if the breach or default under is not cured within ten (10) days' after written notice to Licensee. In such event any rights or privileges of Licensee resulting from this Agreement shall be terminated except that Licensee shall be responsible for the payment of all costs incurred by the Township through the date of termination in relation to the use of the Premises and the insurance policy, which shall remain in effect with respect to damages or injuries caused during the use of the Premises for the event. Licensee shall be responsible for removal of any and all property from the Property and for restoration.
14. Neither the Township nor the Licensee shall be held liable for payment of any fees, costs, or expenses to the other if the festival cannot be given due to an Act of God, including but not limited to acts or regulations of public authorities, labor difficulties, civil tumult, strike or pandemic or epidemic beyond the control of the Township or Licensee. "Act of God," includes but is not limited to the Covid-19 Pandemic and any and all orders, laws, and regulations arising out of or resulting from the spread of the Covid-19 Pandemic. "Act of God," shall not include typical summer weather events, including storms, rain or extreme temperatures. As a result of any Executive Order placing temporary restrictions on the use of places of public accommodation, and/or setting forth the temporary requirement to suspend activities that are not necessary to sustain or protect life, during the Covid-19 pandemic, and any extension or amendment of those Orders, Licensee hereby acknowledges that, in the event that the prohibitions in the Executive Orders or the orders or directives of other applicable public health agencies, or state or local governments, make it impossible to safely undertake the festival, the festival may be delayed, as determined to be necessary in the discretion of the Township or the Licensee. The Township shall not be responsible for any payments or costs relating to delay or cancellation of the festival, and Licensee shall be responsible for ensuring that all of its vendor contracts include similar provisions relating to cancellation in the event of an Act of God, including but not limited to, a pandemic. The festival schedule may be revised to reflect requirements of the applicable Order or social distancing recommendation. If performance dates are not available in the same season, both parties may agree to reschedule the festival to a future date or the next available season, as necessary.

15. This Agreement does not constitute approval of issues requiring a permit or approval by any other governmental entity.

#### General Conditions

16. Either party may terminate this Agreement with cause on sixty (60) days' notice. "Cause" shall mean a breach of or default under this Agreement that is not cured within ten (10) days' after notice.
17. Any failure of either party to insist on strict performance of any provisions of this Agreement shall not be deemed a waiver of the provisions of the Agreement in any subsequent default.
18. This Agreement may not be amended, changed, modified, or discharged except in writing and signed by both parties.
19. All notices under this Agreement shall be in writing and shall be deemed to be given when they are either delivered personally or mailed by certified or registered mail to the receiving party at the address stated in this Agreement or at an address furnished to the other party in writing during the term of this Agreement.
20. The captions and headings used in this Agreement are intended only for convenience and are not to be used in construing the Agreement.
21. This Agreement shall be construed under Michigan Law.
22. This Agreement is binding on successors and assigns, except that this Agreement may not be assigned without Township review and approval of a Park Use Application in accordance with the Township's Park Use Policy
23. If any provision of this Agreement is unenforceable, the other provisions of the Agreement shall remain valid and enforceable to the fullest extent permitted by law.
24. This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. This Agreement does not address and is not intended to affect in any way any permanent use of the Property by the Township at the expiration or termination of this Agreement.
25. The covenants and conditions contained in this Agreement shall apply to and bind the successor's legal representatives and assigns of the parties to this Agreement and all covenants are to be construed as conditions Licensee may not assign any right, privilege or license conferred by this Agreement.
26. The person signing this agreement on behalf of the Licensee is fully empowered by appropriate action if necessary, to execute this agreement on its behalf.

In witness whereof, the parties have executed this agreement at:

Township/City \_\_\_\_\_ County \_\_\_\_\_

State \_\_\_\_\_ on \_\_\_\_\_  
Month, Day, Year

\_\_\_\_\_  
Licensee signature (Applicant) Township signature (Township Representative)

\_\_\_\_\_  
Licensee signature (Applicant) Township signature (Township Representative)

Licensee Print Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

Home Phone Number: \_\_\_\_\_

Work Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_