

TEMPORARY LICENSE AND ACCESS AGREEMENT

This Temporary License and Access Agreement (“Agreement”) is entered into by and between the City of Irving (“CITY”) and _____ (“LICENSEE”).

WHEREAS, the CITY owns the property located at _____ Irving, Dallas County, Texas, further described in the attached Exhibit “A” (“PREMISES”); and

WHEREAS, LICENSEE desires to occupy the PREMISES for the _____ (“EVENT”) and CITY is willing to grant LICENSEE a license for the EVENT, subject to the terms and conditions contained herein; and

WHEREAS, the EVENT is open to the public and promotes the public purpose of _____ and the CITY authorizes LICENSEE to use the PREMISES in accordance with this Agreement,

NOW, THEREFORE, in consideration of Ten and no/100 (\$10.00) Dollars cash in hand paid by LICENSEE to CITY, and for other good and valuable consideration, CITY hereby grants LICENSEE a non-exclusive temporary license and right to access the PREMISES for the EVENT on _____, 20__, from __:00 __.m. to __:00 __.m., pursuant to the terms herein. **Such license and right of access may be revoked at any time by the City for any reason, or for no reason, without any liability or claim of damages against the City:**

- 1. Damage and Restoration of Property:** LICENSEE shall take all necessary precautions to protect the PREMISES from any damages resulting from LICENSEE’S use and access of the PREMISES. LICENSEE shall immediately notify CITY of any and all damages resulting from, arising out of, or caused to, the PREMISES by LICENSEE, its officers, agents, employees and invitees. LICENSEE shall be solely responsible for the costs and the repair and/or replacement of all such damages and such repairs and/or replacements shall be commenced immediately and completed within thirty (30) calendar days and shall be completed in a manner acceptable to CITY in its sole discretion.
- 2. PROHIBITED USES:** LICENSEE shall not use the PREMISES in any manner that constitutes waste or nuisance, or that violates any applicable law, ordinance, or governmental regulation in any respect. LICENSEE shall neither do nor permit to be done anything that would render void or uncollectible any insurance then in force with respect to the PREMISES, or that would in any way increase the premiums payable by CITY for fire, liability, or any other insurance coverage on the PREMISES.
- 3. COMPLIANCE WITH LAW:** LICENSEE agrees to conduct its EVENT and related operations in accordance with good standard practices and shall comply with all federal, state and local laws, rules, and regulations, as well as with all regulations, restrictions, and requirements of the police, fire, and health departments now or hereafter in effect which are applicable to its EVENT and related operations. LICENSEE shall obtain and keep in effect at its own cost

and expense all licenses, permits, and taxes incurred or required in connection with this Agreement and its EVENT and related operations hereunder. **LICENSEE hereby confirms and understands that this Agreement is for the use of the CITY's property only and does not serve as an event permit or approval for any event. LICENSEE is responsible to secure all appropriate event permits.**

4. **NON-EXCLUSIVE:** This Agreement is not exclusive and the CITY reserves the right to go on or across, and to permit others to go on and across, the PREMISES for any purpose whatsoever and to conduct any operations or activities that the CITY may desire.
5. **NO WARRANTY/PREMISES ACCEPTED AS/IS:** This Agreement is made by the CITY without any warranty of title, either express or implied, concerning the PREMISES. LICENSEE agrees that it is taking the PREMISES in its current "AS IS" condition, with no representations or warranties of any nature whatsoever by the CITY. LICENSEE acknowledges that LICENSEE has inspected the PREMISES and is thoroughly familiar with its condition, and LICENSEE hereby accepts the PREMISES in its present condition for its intended use by LICENSEE. No person acting on behalf of CITY is authorized to make, and by execution hereof, LICENSEE acknowledges that no person has made any representations, agreement, statement, warranty, guarantee or promise regarding the PREMISES or the use contemplated herein or the zoning, construction, physical condition or other status of the PREMISES, except as may be expressly set forth in this Agreement. No representation, warranty, agreement, statement, guarantee or promise, if any, made by any person acting on behalf of CITY which is not contained in this Agreement will be valid or binding on CITY.
6. **NOTICE:** Prior to the time LICENSEE is entitled to any license or right of access to or use of the PREMISES for any activity, LICENSEE shall deliver two (2) signed copies of this Agreement to the attention of Walter Thomas, Capital Improvement Program Department/ Real Estate, 825 W. Irving Boulevard, Irving, Texas 75060.
7. **INDEMNIFICATION AND INSURANCE:** LICENSEE shall execute the Indemnification Agreement attached hereto and made a part hereof as Exhibit "C" and keep in force all required insurance coverages as stipulated from time to time by the CITY. The current insurance requirements are attached hereto and incorporated herein as Exhibit "B".

LICENSEE COVENANTS AND AGREES THAT CITY SHALL IN NO WAY NOR UNDER ANY CIRCUMSTANCES BE RESPONSIBLE FOR ANY PROPERTY BELONGING TO LICENSEE, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS, WHICH MAY BE STOLEN, DESTROYED, OR IN ANY WAY DAMAGED, AND LICENSEE HEREBY INDEMNIFIES AND HOLDS HARMLESS CITY FROM AND AGAINST ANY AND ALL SUCH CLAIMS. THE CITY DOES NOT GUARANTEE POLICE PROTECTION AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUSTAINED BY LICENSEE, ITS MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR TRESPASSERS ON ANY OF THE PREMISES.

- 8. LIABILITY:** LICENSEE shall hold CITY harmless from liability resulting from the negligent acts or omissions of CITY, its agents or employees pertaining to the activities to be carried out pursuant to the obligations of this Agreement; provided, however that CITY shall not hold LICENSEE harmless from claims arising out of the negligence or willful malfeasance of CITY, its officers, agents, or employees, or any person or entity not subject to CITY'S supervision or control.
- 9. CLEANUP AND REPAIR:** LICENSEE may coordinate with CITY for permission to enter the PREMISES for the limited purposes of cleaning or repairing the PREMISES in preparation for the EVENT, as well as any cleaning or repairing of the PREMISES after the EVENT. LICENSEE shall clean, repair, and return the PREMISES to the condition in which it existed immediately prior to LICENSEE'S occupancy pursuant to this Agreement, such cleaning and repair shall be completed in a manner acceptable to the CITY in its sole discretion.
- 10. NO ASSIGNMENT:** LICENSEE may not assign or transfer any rights or interest in this Agreement without the written consent of the CITY, and any such attempted transfer without written consent shall be void.
- 11. SEVERABILITY:** In the event that any of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.
- 12. ENTIRE AGREEMENT:** This written instrument constitutes the entire Agreement by the parties hereto concerning this Agreement, and the obligation of the parties and any prior or contemporaneous oral or written agreement that purports to vary from the terms hereof shall be void. This Agreement cannot be modified or amended without the written consent of all the parties hereto and attached and made a part of this Agreement.
- 13. VENUE:** This Agreement shall be governed by the laws of the State of Texas. Venue for any action brought to interpret or enforce, or arising out of or incident to, the terms of this Agreement shall be in Dallas County, Texas or the United States District Court for the Northern District of Texas, Dallas Division.
- 14. GOVERNMENTAL FUNCTIONS AND IMMUNITIES:** LICENSEE hereby acknowledges and agrees that CITY is entering into this Agreement pursuant to its governmental functions in the interest of the health, safety, and welfare of the general public, and that nothing contained in this Agreement shall be construed as constituting a waiver of CITY's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law. The parties hereby acknowledge and agree that this is not an Agreement for goods or services; however, to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the CITY's immunity from suit is waived only as set forth in Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE. Further, the parties agree that this Agreement is made subject to all

applicable provisions of the Texas Civil Practices and Remedies Code (“CPRC”), including but not limited to all defenses, limitations, and exceptions to the limited waiver of immunity from liability provided in CPRC Chapter 101 and Chapter 75.

15. COMPLETE AGREEMENT: This agreement and the exhibits hereto constitute the final and complete agreement, and supersede all prior correspondence, memoranda or agreements between the parties relating to the subject matter thereof. This Agreement cannot be changed or modified other than by a written agreement executed by both parties. Nothing in this agreement shall be deemed to create or constitute a partnership, joint venture, or relationship of principal and agent between the parties.

By executing this Agreement, LICENSEE agrees to and accepts the terms, conditions and provisions provided herein.

EXECUTED on this _____ day of _____, 20____.

CITY:

CITY OF IRVING, TEXAS

Richard H. Stopfer, Mayor

APPROVED AS TO FORM:

Kuruvilla Oommen, City Attorney

LICENSEE:

Name & Title

LICENSEE’S ADDRESS & PHONE NUMBER:

Tlf: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

EXHIBIT B

INSURANCE

The Licensee at his own expense shall purchase, maintain and keep in force during the life of this Agreement, adequate insurance that will protect the Licensee and/or any Additional Insured from claims which may arise out of or result from the Event and related operations under this Agreement. The insurance required shall provide adequate protections from all claims, whether such operations be by the Licensee or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, which may be encountered in the performance of this Agreement in the amounts as shown below in sub-paragraph (A). The Licensee shall provide the following:

- A. Insurance and Amount: The Licensee shall furnish and maintain during the life of the Agreement adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

| <u>Type of Insurance</u> | <u>Amount</u> |
|---------------------------------------|--|
| Worker's Compensation | Statutory Limit as set forth in the Worker's Compensation Act. |
| Employers Liability | \$500,000 Each Accident \$500,000 Disease Per Employee \$500,000 Disease Policy Limit |
| Commercial General Liability (Public) | \$1,000,000 Per Occurrence \$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate |

- B. Additional Insured: The City of Irving shall be an additional insured on the Commercial General Liability (Public) Insurance Policy furnished by the Licensee.
- C. Premiums and Assessments: Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Licensee.
- D. Certificate of Insurance: Proof that the insurance is in force shall be furnished to the City on City of Irving Standard Certificate of Insurance Forms; or at the option of the City, proof of insurance may be accepted on the ACORD form.

- E. Primary Coverage: The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City of Irving, Texas, for its benefit, including self-insurance.

- F. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the Event, the Licensee shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

The Licensee shall not use or access the PREMISES until the Licensee has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

EXHIBIT C
INDEMNIFICATION BY LICENSEE
(Must be Signed by the Licensee)

City shall not be liable or responsible for, and shall be saved and held harmless by Licensee from and against any and all suits, actions, losses, damages, claims, or liability of any character, type, or description, including all expenses of litigation, court costs, and attorney's fees for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, directly or indirectly, the performance of Licensee under this Agreement, including claims and damages arising in part from the negligence of City, without; however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

It is the express intent of the parties to this Agreement that the indemnity provided for in this section is an indemnity extended by Licensee to indemnify and protect City from the consequences of City's own negligence, provided, however, that the indemnity provided for in this section shall apply only when the negligent act of City is a contributory cause of the resultant injury, death, or damage, and shall have no application when the negligent act of City is the sole cause of the resultant injury, death, or damage, unmixed with the legal fault of another person or entity.

Licensee further agrees to defend, at its own expense, and on behalf of City and in the name of City, any claim or litigation brought in connection with any such injury, death, or damage.

The Licensee will secure and maintain Contractual Liability insurance to cover this indemnification Agreement that will be primary and noncontributory as to any insurance maintained by the City for its own benefit, including self-insurance. In addition, Licensee shall obtain and file with City a City of Irving Standard Certificate of Insurance evidencing the required coverage.

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|---------------------------------|
| _____ LICENSEE (Name) |
| _____ BY (Signature) |
| _____ PRINTED NAME |