

CONTRACT FOR LICENSE OF ENGLEWOOD ARTS DISTRICT PUBLIC AREA FOR PROMOTIONAL EVENTS

THIS CONTRACT, made and entered into this _____ day of _____, 2021, by and between the CITY OF INDEPENDENCE, MISSOURI, a municipal corporation (the "City"), and the Englewood Business Association, a Missouri corporation, (The "ASSOCIATION").

WITNESS TO: That the City Council of the City of Independence deems it to be in the best interest of the City and its citizens to promote City pride, commerce and tourism through cooperation with the ASSOCIATION, in the production of various promotional events in the Englewood Arts District. In order to further this purpose, the City hereby grants permission and authority to the ASSOCIATION, upon the terms and subject to the conditions of this license, to use all of the public areas in and around the area generally known as the Englewood Arts District, which the City presently owns or controls, and made a part of hereof by reference for the purpose of conducting the promotional events listed in Exhibit A which is attached hereto and made a part hereof by reference.

SECTION 1. In consideration of the granting of this license the ASSOCIATION, its employees, agents, and persons or organizations participating in the operation of the promotional events hereby agree and covenant:

- A. That the Association shall secure from each occupant or user of the public area, an agreement absolving the City of any liability for theft, loss or damage to property of said occupants or users of the public areas, irrespective of the cause thereof except for liability arising from any occurrence directly involving the intentional act of an employee or agent of the City. Each such agreement to release and waive all rights and claims against the City, and its agents and employees with respect to such theft, loss or damage shall also include release as to any liability for loss to an exhibit or other installation that results from shutdown by the City according to paragraph E of Section 1 of this agreement. Said agreement shall be substantially in the form as attached hereto as Exhibit C.
- B. That the ASSOCIATION shall obtain "General Liability" insurance coverage for each and every promotional event of at least \$2,000,000 aggregate limit for bodily injury and property damage under a Special Event policy issued to the ASSOCIATION with the City named as an additional insured and an owner's protective liability provision to indemnify and save harmless the City, and its agents and employees, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the public areas (except for any

occurrence directly involving the intentional act of an employee or agent of the City) or arising out of the occupancy or use of the public areas or any part thereof by the ASSOCIATION, its employees or agents, or any other occupant or user thereof, or occasioned wholly or in part by any act or omission by the ASSOCIATION, its employees and agents, and any other occupant or user of all or any part of the public areas, and their agents, servants, contractors and employees. The ASSOCIATION and those occupants and users of the public areas, upon receiving written notice thereof, agree to defend such action or proceeding at its own expense by counsel satisfactory to the City. For the purpose of this Contract, occupants and users shall be limited to those individuals or entities who participate in a promotional event by virtue of a contract, license or agreement with the ASSOCIATION. Said definition shall not include members of the general public who attend a promotional event nor individuals who are otherwise on the public areas not as a result of a contract license or agreement with the ASSOCIATION. The ASSOCIATION shall present evidence to the City that any carnival connected with a promotional event has liability insurance in compliance with the City Code of Independence, Section 5.16.002. The ASSOCIATION agrees that any vendors selling alcoholic beverages shall obtain at least \$2,000,000 liquor liability coverage with the City named as an additional insured.

- C. If the public areas, or any portion thereof, during or as a result of any promotional event shall be damaged by the act, default or negligence of the ASSOCIATION, its employees or agents, any occupants and users of the public areas, the ASSOCIATION will pay to the City, upon demand, such sum as shall be necessary to restore the public areas to its previous condition. The ASSOCIATION hereby assumes full responsibility for the character, acts and conduct of all its employees or any person acting for and on behalf of the ASSOCIATION related to any carnival, which is, requires to be obtained or secured. The ASSOCIATION may apply for, and the City shall not unreasonably deny, any special use exception necessary for the conduct of a carnival. That the granting of this license to the ASSOCIATION shall be in lieu of all other licenses required by vendors under Chapter 5 and II of the City Code of the City.
- D. That the ASSOCIATION shall require any occupant or user to remove or correct any unsightly or hazardous structure or condition, which is so deemed by the City; however, it shall be the responsibility of the ASSOCIATION to inspect all temporary installations, tents, other enclosures and structures for suitability and safety. The ASSOCIATION and all occupants or users shall provide free access and full cooperation to designated employees of the City for the purpose of inspection of all installations and operations to insure the public health and safety, food safety, and prevention of property damage.

The City reserves the right to immediately close or prevent the opening or use of any installation deemed by City inspectors to be in violation of the laws of the State of Missouri or the ordinances of the City. The ASSOCIATION and occupants or users agree to abide by the decision of the City in this regard and shall not make any claim or

bring any action against the City, or its agents or employees, in regard to any such action taken by the City.

- E. That the City shall have the right to designate certain of its employees or agents as inspectors, and the ASSOCIATION agrees that such inspectors shall have the right at any time, and as often as the City may consider necessary to inspect any property, and services being rendered, any riding devices, shows, displays, food establishments, or any activities of the ASSOCIATION or the occupants and users of the public areas, and the ASSOCIATION and occupants or users of the public areas will give said inspectors free access to any space used or occupied by them or under their control for the purpose of such inspection and will upon request of such inspector, operate or demonstrate any machinery, mechanical devices, or electrical appliances owned, maintained, or in the possession of the ASSOCIATION or occupants and users of the public areas, or demonstrate or operate any process or activities being carried on by the ASSOCIATION or occupants and users of the public areas.

That ASSOCIATION may request inspection services at hours other than the City's normal business hours. City shall be reimbursed for such inspection services at the rate of \$60.00 per hour, with a minimum of two (2) hour.

The police and fire forces and other authorized agents of the City shall be given free access in accordance with the rules and regulations of the City at any time to the public areas, for the purpose of maintaining order and safety or of enforcing any rule or regulation of the City.

The City shall have the power to immediately close or prevent the opening to the public of any exhibition, which may be in violation of the laws of the State of Missouri or the ordinances of the City. The ASSOCIATION and the occupants and users shall use and occupy the public areas in a safe and careful manner and shall comply with all applicable municipal, state, and federal laws and rules and regulations pertaining to a carnival, food establishments, exhibits, and temporary structures as prescribed by the City, its employees and agents including those laws or ordinances regarding sale of alcoholic beverages and distribution of pornographic materials.

- F. That the ASSOCIATION shall, during the course of all promotional events, provide on a daily basis, a sufficient number of dumpsters for deposition trash and debris resulting

from the promotional event and shall further provide for the removal of such trash and debris from said dumpsters on a daily basis. The ASSOCIATION shall further be responsible for removal of trash during promotional events and replacement, as needed, of the plastic liners in all trash containers located on the public areas, and further agrees that upon the termination of a promotional event, all booths, bleachers, tables and chairs shall be promptly removed from the public areas not later than midnight of the last day of the promotional event.

G. That the ASSOCIATION shall notify all property owners and tenants within the public areas of the dates of the promotional events.

I. That the ASSOCIATION shall notify all occupants and users of the prohibition from disposing of waste or waste water into the storm sewers. The ASSOCIATION further agrees to provide for a system of disposal of waste and waste water acceptable to the City.

SECTION 2. For its part, the City agrees to contribute services as provided:

- A. Provide the personnel deemed necessary by the City to handle and govern the conduct of those attending the promotional events and to maintain public order.
- B. Provide adequate traffic control as considered necessary by the City, including granting a permit to close public streets as is necessary and deemed acceptable by the City for the conduct of a promotional event upon detailed request for a traffic plan made at least thirty (30) days in advance of the promotional event to the City.

SECTION 3. ASSOCIATION further agrees to the following;

- A. The ASSOCIATION shall, upon request of the City or the City's authorized representative, permit inspection of all books, records or other information that the City deems necessary to determine the receipts and expenses and resulting profits or losses associated with the ASSOCIATION'S production of any promotional event. The City agrees that any financial or other information obtained during this inspection that does not relate to a promotional event will be kept confidential by the City.
- B. The City agrees to provide any necessary electrical service and the ASSOCIATION'S \$100.00 cost shall be in addition to the cost of electrical consumption as described below.

1. The ASSOCIATION and the occupants and users of the public areas shall be responsible for the ordinary and reasonable cost of installation of temporary service meters, at an amount not the exceed \$40.00 per temporary meter. City shall be responsible for any amounts that exceed the said sum.
2. The ASSOCIATION and the occupants and users of the public areas shall use receptacles rather than temporary service meters where such receptacles are available and shall pay the amount of \$100.00 per receptacle for this use. The \$100.00 cost shall be in addition to the cost of electrical consumption as described below.
3. The ASSOCATION and the occupants and users of the public areas shall be responsible for the cost of electrical consumption at the metered rate as set forth in schedules adopted by the City for the supply of such electric service. If for any reason any meter fails to record the consumption of electricity, the any reason any meter fails to record the consumption of electricity, the consumption during any such period that the meter is out of service will be considered to be the same as the consumption for a like period immediately before or immediately after the interruption, as selected by the City.
4. The ASSOCIATION agrees that the manner and place of making connections with the above utilities used by the ASSOCIATION shall be determined by the City.

SECTION 4. Contract Termination.

The City and the ASSOCIATION hereby agree that if the City fails to appropriate the funds necessary to provide the services as identified in the Contract during the fiscal year of the Contract, City shall not be required to provide such services and this Contract shall be terminated effective July 1 after the failure to appropriate the funds for that fiscal year.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

ATTEST:

CITY OF INDEPENDENCE, MISSOURI

Rebecca Behrens, City Clerk

Zachary Walker, City Manager

APPROVED AS TO FORM ONLY:

Mitch Langford, Acting City Counselor

ENGLEWOOD BUSINESS ASSOCIATION

ATTEST: