

THE STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF FORT BEND §

**RELEASE AND SITE USE AGREEMENT
FOR FORT BEND COUNTY SIENNA ANNEX PARKING LOT**

This Release and Site Use Agreement, (hereinafter referred to as "Agreement"), is made and entered into by and between Fort Bend County, Texas, (hereinafter referred to as "COUNTY"), a body corporate and politic by and through its governing body, the Fort Bend County Commissioners Court, and the City of Missouri City, Texas, a municipal corporation, principally situated in Fort Bend County, Texas, (hereinafter referred to as "CITY"), acting by and through its City Manager.

WHEREAS, the COUNTY desires to permit the CITY non-exclusive use of the Fort Bend County Sienna Annex parking lot, located at 5855 Sienna Springs Way, Missouri City, Texas 77459 (hereinafter referred to as "Site") for a public purpose, namely for a single-day public event referred to as "MCTX FEST" (herein referred to as the "EVENT");

WHEREAS, CITY desires to fully release the COUNTY of any and all claims, past, present or future, deriving or resulting from the Event; and

WHEREAS, CITY desires to fully indemnify the COUNTY from any and all claims, past, present or future, deriving or resulting from the Event;

NOW THEREFORE, in consideration of the recitals set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

SECTION 1. RIGHT TO ENTER AND USE

1. COUNTY hereby grants to CITY the right to enter on the Site, for the purposes of hosting a single-day public event called "MCTX FEST".
2. Activity that prohibits or obstructs the usual use of entrances or additional parking lots, or that otherwise tends to impede or disturb County business or County employees in the performance of their regular duties, or that otherwise impedes or disturbs the general public is prohibited.
3. COUNTY retains the right to enter Premises for any purpose at any time during the scheduled event or activity.
4. COUNTY reserves the full and absolute right to have persons violating any provision expressed in this document removed from the premises and to prosecute any and all violators to the fullest extent of the law.

SECTION 2. TIME OF PERFORMANCE

1. CITY is hereby granted permission to enter upon Site on April 14, 2018, in accordance with the terms of this Agreement.
2. Access to Site may not occur between 12:00 midnight and 6:00 a.m. or where previously restricted without prior obtained written permission from COUNTY.
3. The COUNTY agrees to use its best efforts to make the Site available during the requested dates. CITY agrees that the COUNTY shall not be liable for damages by reason of non-availability of the Site including those caused by inclement weather, disaster, or other public necessity.
4. COUNTY reserves the full and absolute right to cancel or terminate a reservation at any time for violations of this Agreement, or additional policies or rules that may be promulgated by COUNTY from time to time.

SECTION 3. CITY RESPONSIBILITIES

1. CITY shall return Site in its original condition.
2. CITY agrees to exercise reasonable care in the conduct of its activities at county Site and further agrees to replace or reimburse County for any supplies that may be used by City, its officials, contractors, agents, employees or invitees during the Event.
3. Immediately after completion of the EVENT, CITY, at its sole cost and expense, shall take all reasonable measures to restore the Sienna Annex parking lot to the condition which existed prior to such use.
4. CITY agrees to leave the Site in a clean and orderly condition including, but not limited to, removal of any trash, items or equipment brought on to the Site.
5. CITY agrees hereby to be responsible and liable for any and all damages to the Site including any materials, equipment or other personal or real property of the County.
6. CITY assumes all risk of all loss or damage to any materials, equipment or other property of City. The COUNTY shall have no obligation, responsibility or liability with respect thereto.
7. CITY agrees to accept the Site to conduct its activities, in the condition in which it exists upon execution of this Agreement, without any representation, statements, warranties, express or implied, in respect to its condition, for the proposed use, and in no event shall COUNTY be liable for any defects therein.

8. CITY shall be allowed to serve alcoholic beverages at this EVENT only under the following conditions:
 - a. CITY shall require any provider of services for the EVENT who serves alcoholic beverages to have a valid license through the Texas Department of Alcohol and Beverage Control (TABC).
 - b. CITY and the service providers who will be serving alcoholic beverages on the premises shall comply with all applicable federal, state, county and city laws, ordinances, rules and/or regulations, including those promulgated by the TABC.
 - c. The service providers who will be serving alcoholic beverages shall use servers who are currently certified by the TABC.
 - d. CITY shall employ and have on site to provide security at least 2 uniformed Missouri City Police Officers, Fort Bend County Sheriff's Deputies, or Fort Bend County Constables for the first 100 attendees or fraction thereof, and at least one additional such peace officer for each additional 100 attendees or fraction thereof.
 - e. The service providers who will be serving alcoholic beverages are required to have Liquor Liability Insurance of at least \$1,000,000.00 coverage in addition to the basic insurance requirements outlined herein in Section 7 of this Agreement.
9. In the event of an emergency, CITY will immediately dial 911, contact appropriate emergency services, and notify both the peace officer on duty and the designated COUNTY representative.

SECTION 4. INSPECTIONS

1. Both CITY and a designated COUNTY Employee will inspect the Site prior to use and note any existing damage. Dates and times of inspection must be arranged by City.
2. Once the inspection is complete, unless noted in writing and signed by both parties, COUNTY Site is considered to be in good condition, without blemish and in good usable condition.
3. In the event that CITY fails to schedule an appointment, CITY expressly agrees that the Site is accepted by the CITY in its "AS-IS", "WHERE-IS" condition, "WITH ALL FAULTS", ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES REGARDING THE SITE, EXPRESS OR IMPLIED, ARE GIVEN BY THE COUNTY, AND THE CITY WAIVES AND DISCLAIMS ALL OF THE SAME (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF SUITABILITY, HABITABILITY, MARKETABILITY OR FITNESS FOR A PARTICULAR PURPOSE).
4. Upon completion of Activities, both CITY and designated COUNTY Employee will inspect the Site and note any existing damage. End of use inspections must take place as soon as possible upon the completion of Activities. Dates and times of inspection must be arranged by City.

SECTION 5. TERM

1. The term of this Agreement shall begin on April 14, 2018 at 8:00 a.m. and end on April 14, 2018, at 11:59 p.m., unless terminated sooner by County for cause.

SECTION 6. INDEMNITY AND RELEASE

1. CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, SERVANTS, VOLUNTEERS, GUESTS, CONTRACTORS, SUBCONTRACTORS AND ANY AND ALL PERSONS IN PRIVITY WITH CITY, HEREBY AGREE TO FULLY RELEASE, ACQUIT, AND FOREVER DISCHARGE THE COUNTY, ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND SERVANTS, AND ALL PERSONS IN PRIVITY WITH THE COUNTY, FROM ANY AND ALL PAST, PRESENT OR FUTURE CLAIMS OR CAUSES OF ACTION OF ANY KIND WHATSOEVER, AT COMMON LAW, STATUTORY OR OTHERWISE, THAT MIGHT ARISE, AT ANY TIME, DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO THE EVENT. NOTWITHSTANDING THE FOREGOING, SUCH HOLD HARMLESS AND INDEMNIFICATION SHALL NOT APPLY TO THE EXTENT THAT SUCH LIABILITY, CLAIM, DAMAGE OR ACTIONS, SHALL ARISE FROM THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF COUNTY, ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS.
2. TO THE EXTENT AUTHORIZED BY LAW, CITY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS, SERVANTS, VOLUNTEERS, GUESTS, CONTRACTORS, SUBCONTRACTORS AND ANY AND ALL PERSONS IN PRIVITY WITH CITY, HEREBY AGREE TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COUNTY AND ITS OFFICIALS, OFFICERS, EMPLOYEES, AGENTS AND SERVANTS, AND ALL PERSONS IN PRIVITY WITH THE COUNTY, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEY'S FEES, BODILY INJURY, SICKNESS, DISEASE OR DEATH, THAT MIGHT ARISE, AT ANY TIME, DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO THE EVENT.
3. These indemnity and release provisions shall survive the termination or expiration of this agreement.

SECTION 7. INSURANCE

1. Prior to commencement of the Activities, CITY shall furnish COUNTY with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to COUNTY. CITY shall provide certified copies of insurance endorsements and/or policies if requested by COUNTY. CITY shall maintain such insurance coverage from the time the Activities commence until the Activities are completed and provide replacement certificates, policies

and/or endorsements for any such insurance expiring prior to completion of the Activities. CITY shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

- a) Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - b) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - c) Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
2. COUNTY and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of CITY shall contain a waiver of subrogation in favor of COUNTY and members of Commissioners Court.
 3. If required coverage is written on a claims-made basis, CITY warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that the Activities are completed.

SECTION 8. INDEPENDENT CONTRACTOR

1. In the performance of work or services hereunder, CITY shall be deemed an independent contractor and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of CITY or, where permitted, of its subcontractor.
2. CITY and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of COUNTY and shall not be entitled to any of the privileges or benefits of COUNTY employment.

SECTION 9. NOTICES

1. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing:

personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

2. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

COUNTY: Fort Bend County Facilities Management and Planning
Attn: James Knight, Director
301 Jackson Street, Suite 301
Richmond, Texas 77469

With Copy to: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

CITY: City of Missouri City
Attn: City Manager
1522 Texas Parkway
Missouri City, Texas 77489

3. Notice is effective only if the party giving or making the Notice has complied with subsections 1. and 2. above and if the addressee has received the Notice. A Notice is deemed received as follows:
 - a) If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 - b) If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

SECTION 10. EFFECTIVE DATE

This Agreement will become effective upon the signature of the last party.

SECTION 11. TERMINATION FOR CAUSE

Notwithstanding the foregoing, in the event CITY shall fail to materially comply with the provisions of this Agreement, including but not limited to its obligations to comply with applicable law and regulation, after reasonable warning.

SECTION 12. COMPLIANCE WITH LAWS

All persons in and on COUNTY property shall comply with all official signs and with the directions of law enforcement, security force personnel or other authorized individuals.

SECTION 13. ASSIGNMENT AND DELEGATION

Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

Neither party may delegate any performance under this Agreement.

Any purported assignment of rights or delegation of performance in violation of this Section is void.

SECTION 14. APPLICABLE LAW

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

SECTION 15. SUCCESSORS AND ASSIGNS

COUNTY and CITY bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

SECTION 16. THIRD PARTY BENEFICIARIES

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

SECTION 17. SEVERABILITY

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

SECTION 18. CAPTIONS

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

SECTION 19. ENTIRE AGREEMENT

This Agreement reflects the entire Agreement between the parties, and supersedes any previous communications, oral or in writing.

SECTION 20. MODIFICATIONS

Any modification(s) or change(s) to this agreement, whether in the form of interlineation(s) or an addendum, attachment, exhibit or the like, is invalid, not binding and of no force or effect unless and until (i) such modification(s) or change(s) is initialed by, and (ii) this agreement is signed by CITY AND COUNTY, or any their respective authorized representative(s).

SECTION 21. ACKNOWLEDGEMENT

CITY and its officials, officers, employees, agents, servants, volunteers, and all persons in privity with the CITY, hereby acknowledge and agree that they have read this Agreement and that they fully understand the Release and its consequences. CITY expressly warrants to COUNTY that it is has the legal authority to execute this Release, and that it does so of its own free will and accord without reliance on any representations of any kind or character not expressly set forth herein.

{EXECUTION PAGE FOLLOWS}

{REMAINDER INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date of the last signature.

FORT BEND COUNTY, TEXAS

CITY OF MISSOURI CITY, TEXAS

Robert E. Hebert, County Judge

Scott R Elmer, PE
~~Anthony J. Snipes, City Manager,~~
Scott R. Elmer, PE, Assistant City Manager

Date

3-29-18

Date

ATTEST:

Laura Richard, County Clerk

ATTEST:

Maria Jackson
Maria Jackson, City Secretary
~~Vickie Berglund, Deputy City Secretary, M)~~

APPROVED:

FORT BEND COUNTY FACILITIES
MANAGEMENT AND PLANNING

By: _____
James Knight, Director



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