



TEMPORARY USE AGREEMENT
City of Austin – Health and Human Services Department

This Agreement (“Agreement”) is made and entered into between the City of Austin (“CITY”) acting by and through its Manager, City of Austin-Health and Human Services Department, PO Box 1088 Austin, Texas, 78767 (“Manager”), and _____(business name) at _____(city/state), (“Licensee”) on this the _____ day of, _____.

IN CONSIDERATION OF the duties, obligations and covenants of each party to the other, and other good and valuable consideration, CITY and Licensee agree as follows:

- 1. PREMISES:** Subject to the terms of this Agreement, CITY grants to Licensee a license to use _____(the “Premises”).

Licensee has inspected the Premises and accepts the same AS IS, WITH ALL FAULTS, IN ITS THEN EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE CONDITION OF THE PREMISES, OR ITS FITNESS FOR USE FOR LICENSEE’S PURPOSES.

Improvements – Licensee is authorized to make temporary modifications to Premises as follows:

Licensee will use drop cloths and other appropriate measures to protect the asphalt and building from paint drops or over-spray. Extreme care must be taken to prevent paint, solvent or chemical overspray or spills from occurring. In the event of an overspray or spill, Licensee, at Licensee’s sole expense, shall promptly clean up the paint, solvent or other chemicals, and remediate the premises to the same condition that they were in prior to the inception of this License. Licensee shall obtain prior written approval before any other modifications, alterations, or other changes (“Changes”) to the Premises are undertaken, even if temporary in nature, and to coordinate such Changes with Manager, Bob Corona. Such approval may be granted, denied, or conditioned, in the Manager’s reasonable discretion. Any approved Changes to the Premises will be at Licensee's expense. Upon termination of this License, Licensee shall, at its sole expense, dismantle and remove any Changes and restore the Premises to its original condition, normal wear and tear excepted if requested to do so by CITY.

- 2. TERM:** The License granted hereby shall commence on _____ and end at _____, on _____, (the “Initial Term”), subject to termination by the City at any time upon five (5) days prior written notice. The provisions of this Agreement shall govern any option period.
- 3. USE:** Licensee will use the Premises for the purposes of constructing a movie set, shooting scenes, parking commercial trucks and for no other purpose or use without the prior written consent of the Manager.
- 4. FEES:** Licensee will pay to the CITY a fee of \$500.00 for use and occupancy of the Premises during the Initial Term of this Agreement. Fees for the Initial Term shall be paid in advance upon of the

Premises during the Initial Term of this Agreement. Fees for the Initial Term shall be paid in advance upon execution of this Agreement. In the event that this License shall continue in effect past the Initial Term, Licensee shall pay \$500 per day in advance without notice, demand or set-off. All payments shall be by check, made payable to City of Austin and mailed or otherwise delivered to:

City of Austin - _
Health and Human Services Department
c/o Bob Corona
PO Box 1088
Austin, Texas 78767.

If Manager does not receive from Licensee all of any installment of the fees within five (5) days after the due date thereof, then Licensee shall pay, in addition to the installment of the fees due, a late payment charge equal to five percent (5%) of the installment of the fees, or portion thereof, which is overdue. In the event that a check has been remitted for the payment of any installment of the fees or other sum to be paid by Licensee hereunder is not honored upon its presentment for payment, then Licensee shall pay to Manager on demand a fee of five percent (5%) of the installment of the fees or other sum to be paid. Following the dishonor of any check presented for payment, Manager shall have the right to require all further payments under this agreement to be by certified check or money order. All late payment charges and fees for dishonored checks shall be for the purpose of reimbursing the City for the additional costs and expenses which it presently expects to incur in connection with the handling and processing of late or dishonored payments of the fees or other sums due hereunder. In no event, however, shall the charges permitted by this Section 5 or elsewhere in this Agreement, to the extent the same are considered to be interest under applicable law. This provision for such late charge or fee for dishonor shall be in addition to all other rights and remedies available to the City hereunder or at law or in equity, and shall not be construed as liquidated damages or as limiting the City's remedies in any manner

5. **SECURITY DEPOSIT:** Upon the execution of this Agreement, Licensee shall deliver to the Manager of the Premises a refundable security deposit in the amount of \$1,000.00 by check (the "Deposit") payable to the City of Austin. Said Deposit shall be held by the CITY as security for Licensee's performance of its obligations under this Agreement. The Deposit or any remaining balance thereof shall be returned to Licensee within 10 business days after termination of this Agreement, provided Licensee is not in material, uncured default hereof.

6. **RESPONSIBILITIES - LICENSEE**

- A. Non-Smoking Facility - Licensee shall operate the Premises as a non-smoking facility.
- B. Improvements - Licensee shall obtain Manager's prior written approval before any modifications, alterations, or other changes ("Changes") to the Premises are undertaken, even if temporary in nature, and to coordinate such Changes with Bob Corona. Such approval may be granted, denied, or conditioned, in the Manager's reasonable discretion. Any approved Changes to the Premises will be at Licensee's expense. Upon termination of this License, Licensee shall, at its sole expense, dismantle and remove any Changes to facilitate and restore the Premises to its original condition, normal wear and tear excepted.
- C. Clean Premises - Licensee, at Licensee's expense, shall provide janitorial and custodial services to maintain the Premises in a clean, neat and sanitary condition. Licensee shall provide for an adequate and sanitary means for garbage collection on and removal from the Premises at its expense. Licensee shall keep the Premises clean and free of litter and debris at all times.

- D. Right Of Access – The City shall have the right of access to the Premises at all reasonable times. Licensee will provide any keys or cards to facilitate access to the Premises. The City will not interrupt production activities.
- E. Compliance with Law – In its use of the Premises, Licensee shall comply with all applicable state, federal, and City laws, ordinances, rules, and regulations regarding its work, and OSHA regulations. Licensee shall indemnify and hold the City harmless from and against, and shall timely pay, all fines or penalties imposed for violations of such laws, ordinances, rules and regulations by Licensee, or its agents, employees, or contractors. Licensee, at Licensee’s cost, shall obtain all necessary or appropriate licenses and permits.
- F. Hazardous Materials - No hazardous materials or toxic substances shall be kept, stored, used or discharged on Premises without prior notification to and consent by the Manager, the Austin Police and Austin Fire Department. Licensee shall comply strictly with all applicable Federal, State, and local laws, ordinances, rules and regulations regarding hazardous materials or toxic substances, and, unless caused by the sole negligence or willful misconduct of the City, Manager or their respective agents or employees, shall indemnify and hold the City harmless from and against any and all liability arising from Licensee’s use, storage or discharge of hazardous materials or toxic substances on the Premises.
- G. Security - Licensee shall secure the Premises. Licensee shall be solely responsible for the security of its personnel, property and equipment. City personnel shall have the authority to prohibit any activity when necessary to protect City property and equipment or the public health and safety; however this shall not decrease the liability of Licensee in any way.
- H. Contact Names - Licensee shall provide a list of contact persons responsible for the Premises, which shall to be given to the representative of Health and Human Services Department, Bob Corona. The list shall include numbers that can be called during any 24-hour period and on weekends. The representative of Health and Human Services Department shall also provide Licensee a list of names and phone numbers for Licensee to call in case of an emergency.
- I. Fire Extinguishing Equipment - Licensee shall provide fire-extinguishing equipment at its own expense, as reasonably directed by the CITY.
- J. Entry and Exit Routes/Parking - Licensee shall use only the designated route to and from the Premises, as indicated in Exhibit B. Licensee shall insure that its personnel use only the designated vehicle parking areas as indicated in Exhibit A. As a throughway, perimeter road is to be kept free from obstructions, including vehicles, equipment and personnel. Care must be taken not to interfere with other operations or business being conducted around Premises.
- K. Alcohol, Drugs, Firearms - Licensee shall not permit the use or possession of firearms, alcoholic beverages, illegal drugs, or controlled substances on the Premises.
- L. Utilities – No heating, air conditioning, water, wastewater, other utilities or restroom facilities are available on site. No utilities are included. Licensee shall provide all utilities at Licensee’s expense.

7. RESPONSIBILITIES - CITY

- A. CITY shall provide Licensee reasonable access to the Premises for the purposes intended under this Agreement.
- B. The City shall not be obligated to make any improvements or repairs whatsoever to the Premises while in use under this Agreement. Unless otherwise agreed in writing, in the event that the Premises become unsuitable for the uses intended under this Agreement, the City shall not be obligated to either repair or remedy any defects causing such event' nor shall City be obligated to provide replacement facilities: provided, however, if such event causes the Premises to become unsuitable for the uses intended under this Agreement Licensee may terminate this Agreement upon five (5) days written notice to City. Licensee shall be entitled to immediate refund of security deposit and any fees paid in advance.

8. TERMINATION:

- A. Termination by Licensee - This Agreement may be terminated by Licensee upon material default by CITY in the performance of any covenant or agreement herein required to be performed by CITY and the failure of CITY to remedy such default within five (5) days after receipt of a written notice to remedy the same from Licensee.
- B. Termination by CITY - This Agreement may be terminated by CITY upon the occurrence of one or more of the following events:
 - 1. Licensee fails to pay to CITY any fee or charge required hereunder, and such failure continues for ten (10) days after receipt of written notice and demand; or
 - 2. Licensee materially defaults on the performance of any other material obligation of Licensee hereunder, and such default has not been cured within ten (10) days after receipt of written notice of default; or
 - 3. Licensee shall become insolvent, shall make a general assignment for the benefit of creditors, shall file a voluntary petition in bankruptcy or indebtedness under the federal bankruptcy laws, or shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

Upon the happening of any such event, and should either party fail to cure such default within the time specified, either party shall have the right to immediately terminate this Agreement by giving written notice thereof to Licensee.

- 9. RE-DELIVERY OF PREMISES:** Licensee shall, upon termination of this License, quit and deliver the Premises to CITY peaceably, quietly and in a condition as good or better as the same now exist, reasonable use and wear thereof excepted. Licensee, at Licensee's expense, shall repair any damage to the Premises caused by or was the result of Licensee's use of the Premises. All keys and access cards will be returned to the Manager.

- 10. PERSONAL PROPERTY:** Upon termination of this Agreement, Licensee shall remove all of its personal property from Premises. If Licensee fails to promptly remove its personal property from the Premises, the CITY shall have the right (but not the obligation) to store such property, either on the Premises or remove the property and store it off-premises, and charge Licensee the greater of THREE HUNDRED DOLLARS (\$300.00) per day or CITY's actual expense, plus a 15% administrative charge. Licensee shall assume all risk of damage to or loss of its property arising out of storage of Licensee's property by the City.

11. **FORCE MAJEURE:** Neither CITY nor Licensee shall be deemed to be in default of this Agreement by reason of its failure to perform any of its obligations hereunder if, while, and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible, and which are not within its control.
12. **INSURANCE REQUIREMENTS:** Licensee shall carry insurance in the types and amounts shown on **Exhibit B**, attached hereto and incorporated herein, for the duration of this Agreement, and furnish certificates of insurance as evidence thereof.
13. **LIABILITY AND INDEMNIFICATION:** Unless caused by the sole negligence or willful misconduct of the City, Manager or their respective agents or employees, Licensee shall defend, indemnify and hold harmless CITY and its officials, employees, agents, representatives, successors and assigns (the "Indemnified Parties"), from and against all costs, expenses (including reasonable outside attorneys' fees, expenses, and court costs), liabilities, damages, claims, suits, actions and causes of actions whatsoever ("Claims"), to the extent arising directly or indirectly, out of (a) any material breach of this Agreement by Licensee, its agents, employees, subtenants or contractors, (b) any false representation or warranty made by Licensee hereunder, (c) any negligent act or omission, gross negligence, or willful misconduct of Licensee, or its agents, employees, subtenants or contractors in connection with this Agreement. LICENSEE'S OBLIGATIONS UNDER THIS PARAGRAPH EXPRESSLY INCLUDE CLAIMS ARISING OUT OF, OR CONCERNING THIS AGREEMENT, OR LICENSEE'S USE OR OCCUPANCY OF THE PREMISES, THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OR WILLFUL MISCONDUCT OF LICENSEE, OR ITS AGENTS, EMPLOYEES, SUBTENANTS AND CONTRACTORS. Licensee shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against any of the Indemnified Parties, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnified Parties. Maintenance of the insurance required under this Agreement shall not affect Licensee's indemnity obligations. Licensee may contest the validity of any Claims, in the name of CITY or Licensee, as Licensee may in good faith deem appropriate, provided that the expenses thereof shall be paid by Licensee and Licensee shall maintain adequate insurance to cover any loss(es) which might be incurred if such contest is ultimately unsuccessful.
14. **RIGHTS.** All rights of every kind and nature whatsoever in and to all still and motion pictures and sound recordings made hereunder in connection with use of the Premises by Licensee (including, but not limited to the copyright of such still and motion pictures and sound recordings) shall be and remain the sole and exclusive property of Licensee, free of any claims whatsoever by Manager or any other person, firm or corporation, including, without limitation, the perpetual and irrevocable right and license to use, re-use, exploit, advertise, and exhibit said photography and/or said sound recordings in connection with any motion pictures or any other entertainment program, or otherwise, as Licensee shall elect, and in connection with advertising, publicizing, exhibiting and exploiting such motion pictures or other entertainment programs, in any manner whatsoever and at any time by all means, media, devices, processes and technology now or hereafter known or devised in perpetuity throughout the universe, as Licensee, in its sole and unfettered discretion, shall determine, and to permit any other person, firm or corporation to do any or all of the foregoing, or Licensee may refrain from any or all of the foregoing. Neither Manager nor any other party now or hereafter claiming an interest in the Premises and/or interest through the Manager shall have any right of action against Licensee or any other party arising from or based upon any use or exploitation of said photography and/or said sound recordings, whether or not such use is or is claimed to be defamatory, untrue or censurable in nature. Any breach, revocation, voiding or cancellation of this Agreement shall not affect Licensee's rights under this Agreement to the work product produced by Licensee prior to such breach, revocation, voiding or cancellation of this Agreement.

Notwithstanding any remedy to which CITY or Manager may become entitled in equity or at law, CITY and Manager hereby waive any right they may have to enjoin or seek to enjoin the development, production, exhibition, promotion and/or distribution of the motion picture currently entitled "_____."

15. **LIMITATION OF LIABILITY:** EACH PARTY HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES FROM THE OTHER PARTY, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR INCOME, CLAIMS OF LICENSEE'S CUSTOMERS AND CONTRACTORS, AND OTHER SIMILAR CLAIMS OR DAMAGES.
- 15A. **NO INJUNCTIVE RELIEF:** In any action by the City for a breach of this Agreement, the City shall not have the right to enjoin, restrain or interfere with the distribution or other exploitation of the Licensee's production.
16. **ASSIGNMENT:** Licensee will not sublet, or assign any rights under this Agreement or any portion of the Premises without the prior written consent of the Manager, which consent may not be unreasonably withheld.
17. **NOTICES:** All notices under this Agreement shall be by certified mail, overnight mail, or by personal delivery, and shall be effective upon receipt. Notice shall be sent to the address for the receiving party set forth in the initial paragraph of this Agreement, or to such other address as a party may designate for notice purposes in writing.
18. **JURISDICTION AND VENUE:** This Agreement is made under the laws of the State of Texas, and any disputes that arise under or concern this Agreement shall be governed by the laws of the State of Texas, without regard to conflicts of laws principles. Venue for any suit at law or in equity involving the Agreement, shall be proper and lie exclusively in Travis County, Texas.
19. **NON-DISCRIMINATION, AFFIRMATIVE ACTION, AMERICANS WITH DISABILITIES ACT:** Licensee, for itself, its successors and assigns, as part of the consideration heretofore, agrees that no person, on the grounds of race, color national origin, age, sex, or handicap, shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination, in the use of the Premises and the furnishing of services thereof. Licensee will comply fully with all provisions of Public Law 101-336, Americans with Disabilities Act of 1990 to the extent applicable.
20. **APPLICATION FORM:** CITY is granting this license in reliance on the information provided by Licensee. Licensee warrants that the information provided by Licensee is true, correct, and complete. Breach of the foregoing warranty shall be a material default by Licensee, which shall entitle CITY to immediately terminate this License per provisions of this Agreement.
21. **NO LIENS:** Licensee shall pay for all labor or materials furnished in the repair, replacement, development or improvement of the Premises by Licensee, and shall keep same and Licensee's interest therein free and clear of any mechanic's or materialmen's lien or encumbrance of any kind whatsoever created by Licensee's act or omission.
22. **NON-WAIVER OF RIGHTS:** Continued performance by either party hereto of the terms of this Agreement following a default shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default and no waiver of such default shall be construed or act as a waiver of any subsequent default.

- 23. **INVALIDITY OF CLAUSES:** In the event that any covenant, condition, or clause, herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or clause, shall in no way affect any other covenants, conditions or clauses.

- 24. **ATTORNEY'S FEES:** In any action brought by either party for the enforcement of the obligations of Licensee, either party shall be entitled to recover interest at the maximum lawful rate, reasonable outside attorney's fees and court costs and other expenses of litigation.

- 25. **HEADINGS:** The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

- 26. **LEGAL RELATIONSHIPS:** It is understood and hereby agreed by the Parties that Licensee is, and shall be, an independent contractor hereunder and shall control all ways, means, and details incident to the performance of its work, for itself, and its agents and employees.

- 27. **ENTIRE AGREEMENT:** It is understood and agreed that this instrument (including the Exhibits described below) contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and may not amended or modified except in writing signed by both parties.

Exhibit A - Licensed Premises, Ingress and Egress Route
 Exhibit B - Insurance Requirements

IN WITNESS WHEREOF, this Agreement is hereby executed as of the date set forth above.

Approved as to form:

 Assistant City Attorney

CITY OF AUSTIN

LICENSEE

Health and Humans Services Department

_____.

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

Exhibit A
Health and Human Service Campus, 44 acres

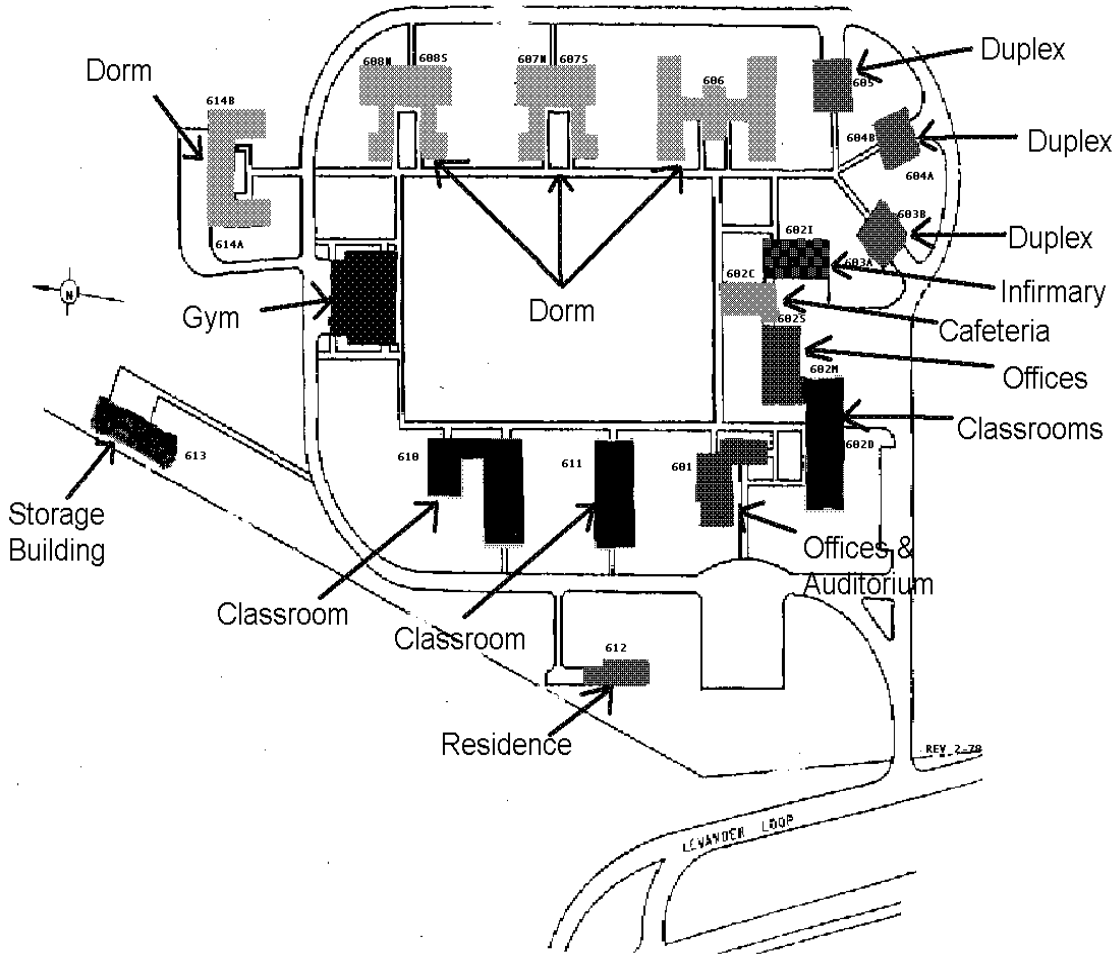




EXHIBIT B INSURANCE REQUIREMENTS

A. Types of Coverage

Licensee shall carry insurance in the following types and amounts for the duration of this Agreement, and furnish certificates of insurance as evidence thereof.

- 1) Commercial General Liability insurance with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverages A & B. The policy shall contain the following provisions:
 - a. Blanket contractual liability coverage for liability assumed under this contract.
 - b. Medical expense coverage with a limit of \$5,000 for any one person.
 - c. The CITY shall be listed as an additional insured.
 - d. Thirty (30) day notice of cancellation in favor of the CITY.
 - e. Waiver of Transfer of Right of Recovery Against Others in favor of the CITY.
 - f. Fire Legal Liability with minimum limits of \$50,000.
- 2) Business Automobile Liability Insurance for all owned, non-owned, and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The City shall be listed as an additional insured.

B. General Requirements

- 1) This Agreement shall not be effective until Licensee has obtained the required insurance and until such insurance has been reviewed by the CITY. Approval of insurance by the CITY shall not relieve or decrease the liability of Licensee hereunder.
- 2) If insurance policies are not written for amounts specified above, Licensee shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 3) Licensee shall be responsible for deductibles and self-insured retentions, if any, stated in policies.
- 4) Any coverage written on a "claims made" basis shall carry a retroactive date that coincides with the date of this Agreement. This insurance shall be maintained for the duration of this Agreement and for six months following completion of the services under this Agreement. The premium for any extended reporting period shall be paid for by the policyholder.
- 5) Insurance shall be written by companies in good standing with the Texas Department of Insurance and shall be written by companies with an A.M. Best rating of B+ or better or otherwise acceptable to the CITY.
- 6) The "other" insurance clause shall not apply to the Owner where the CITY is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering the CITY and Licensee shall be considered primary coverage as applicable

- 7) All additional insureds and thirty (30) days notice of cancellation endorsements as well as certificates shall indicate: The City of Austin, **Health and Human Services** Department, PO Box 1088, Austin, Texas 78767-1088.
- 8) The City may make reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- 9) The CITY reserves the right to review insurance requirements of this section during the effective period of this Agreement and to make reasonable adjustments to insurance coverage's and their limits when deemed necessary and prudent by the CITY based upon changes in statutory law.
- 10) Licensee shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.
- 11) Licensee shall pay actual losses not covered by insurance as required by the Agreement, except for such losses arising through the sole negligence or willful misconduct of the City, Manager or their respective agents or employees.