

## 2012 USE AGREEMENT

State of Texas §

Know All By These Presents:

County of Nueces §

This short term Use Agreement ("**Agreement**") between the City of Corpus Christi, a Texas home-rule municipal corporation ("**City**"), acting through its duly designated **City Manager**, and Moondogger Productions, LLC a Texas entity, acting through its duly designated agent, is in consideration of the covenants contained herein.

### 1. Definitions.

- a. **City** - means the City of Corpus Christi, a Texas home-rule municipality.
- b. **City Attorney** - means the **City's** Attorney or designee.
- c. **City Traffic Engineer** - means the **City's** Director of Engineering Services or designee.
- d. **City Manager** - means the **City's City Manager** or designee.
- e. **Moondogger Productions' Agent** - means a duly authorized representative of Moondogger Productions, LLC.
- f. **Event** - means the Discover Downtown Music & Film Festival ("**Festival**") and related activities sponsored by Moondogger Productions. The **Event** dates are May 18, 2012 and May 19, 2012. The specific types of activities at the Event include the following: music and film festival (film rated PG), food and beverage sales include beer and wine, art exhibit and sales, kid's area, and other activities as agreed to by the Parks Director
- g. **Parks Director** - means the **City's** Director of Parks and Recreation or designee.
- h. **Police Chief** - means the **City's Police Chief** or designee.
- i. **Premises** - means the **Event** sites for the Festival and related activities, specifically the site of the former Memorial Coliseum and north parking lot and any related streets which are closed by City Council for the Event, more fully described on the attached and incorporated **Exhibits**.
- j. **Risk Manager** - means the **City's** Director of Risk Management or designee.
- k. **City Secretary** - means the **City** Secretary or designee.

2. **Term.** This **Agreement** takes effect upon execution by the **City Manager**. **Moondogger Productions** will be entitled to exclusive use of the Premises described

below, for the periods identified on Exhibit B. The **City Manager** may authorize amendment to **Exhibit B**.

**3. Premises.** City grants to **Moondogger Productions** the privilege of using the **Premises**, to conduct its **Event** for the dates May 18, 2012 and May 19, 2012.

**4. Premises Revisions.** If **Exhibit A** is revised, new **Exhibits A** will be executed by the **City Manager** and **Moondogger Productions** Agent and filed with the **City** Secretary and **Parks Director** and supersede the existing **Exhibit A**. New **Exhibit A** becomes effective upon filing with the **City** Secretary.

**5. Event Layout Diagram.** **Moondogger Productions Agent** must provide the **Parks Director** a diagram explaining the final **Event** layout for all related activities at least two weeks prior to the **Event**. Layout of the **Event** is subject to the approval of the **Parks Director**.

**6. Special Event Fee.** **Moondogger Productions** must pay **City** a one-time Special **Event Permit** fee of \$400.00 under **City** ordinance.

**7. Payment of City Costs.** In consideration for the use of **City** property, **Moondogger Productions** will pay the **City** within 30 days after receipt of **City** invoice the actual cost incurred for services rendered, including any other **City** services provided by departments other than Parks & Recreation and Police, less any amount(s) that **Moondogger Productions** has disputed. An invoiced amount will be considered to be in dispute upon receipt, by the **Parks Director**, of a written notice from **Moondogger Productions**. The written notice must detail the basis for the disputed claim and must be received by **Parks Director** within twenty (20) calendar days of **Moondogger Productions**'s receipt of **City** invoice. Resolution and payment of any disputed amount(s) will be governed by Section 25.

The **Parks Director** will invoice **Moondogger Productions** for the **City's** Direct Costs within thirty (30) calendar days after the **Event**. The invoice will provide an itemized breakdown of the **City** charges for services rendered (such as set up and take down, **Event** clean-up, street sweeping, and repair categories. Upon receipt of written request of **Moondogger Productions Agent**, the **Parks Director** will furnish reasonable supporting documentation of the charges within ten (10) calendar days. If there is a hurricane or other weather activity, or event outside the control of the parties that eliminates the **Event** or that reduces anticipated attendance at the **Event**, the **City Manager** is delegated the authority to adjust the billing of **City's** Direct Costs.

**A. Direct Costs.** **City's** Direct Costs in assisting with the **Event** may include, but are not limited to:

1. Damages to **City** property as a result of the **Event**, which will be billed at the cost of repair. This includes but is not limited to, damages caused by negligent acts or omissions of **Moondogger Productions**, its employees, volunteers, vendors, contractors, or subcontractors. This includes but is not limited to, damages to the utility infrastructure such as water lines caused by acts of

Moondogger Productions, its employees, volunteers, vendors, contractors, or subcontractors. If the sod at the Premises is damaged, Moondogger Productions agrees to either replace the sod with similar product, or to reimburse the City's costs for sod replacement. Parks Director will provide Moondogger Productions a punchlist of damage to City property within seven (7) days after Moondogger Productions has vacated the City property. Moondogger Productions must repair damages within ten (10) days after receipt of the punchlist. If Moondogger Productions fails to restore all items on the punchlist, Parks Director may do so and invoice Moondogger Productions for direct costs. Moondogger Productions shall be responsible to replace any turf damage due to the use for these Events. Moondogger Productions must fill and compact all holes in grassy areas made during the Event. Parks Director must approve all fill material.

2. Costs of labor contracted for clean up, or additional clean up required by the Directors of relevant **City** departments, at applicable **City** rates for the year billed. (**Moondogger Productions** will be given the opportunity to hire and work its own clean up crew during and after the **Event**.)

3. Costs of Police Officers provided for security, crowd control, traffic control, and off-site traffic control, at applicable **City** rates for the Police Officers assigned. For the Event, **Moondogger Productions** shall be responsible for 100% of all non-police City Direct Costs, 100% of all City health permit/vendor and related fees, and 100% of police overtime.

4. Costs of any other services requested by **Moondogger Productions** 's **Agent** and provided by **City** are Moondogger Productions 's responsibility.

**B. Notice of Costs.** For planning purposes only, attached as **Exhibit C** are estimates of the rates and costs for **City** Services that may be provided for the **Event**. **Moondogger Productions** shall be liable for all actual cost incurred by **City** related to the **Event** even if the actual cost exceeds the cost shown in **Exhibit C**.

**C. Late Fee.** **Moondogger Productions** failure to pay the undisputed charges on **City**'s invoice within 30 days after submittal to **Moondogger Productions** shall result in a late payment fee being assessed against **Moondogger Productions** . The late payment fee shall be calculated to be 5% of the amount due, as shown on **City**'s invoice, less any disputed amounts, and said fee will be added to the net amount payable to the **City**.

8. **Deposit.** **Moondogger Productions** must pay a deposit of \$2,000 at least one month in advance of the **Event**, made payable to the **City**. The deposit will be used to reimburse **City** for any costs incurred for trash pick up or removal of any structures or repairs to **City** property. If no costs are incurred and Direct Costs are paid, the deposit will be returned to **Moondogger Productions** within 30 days after the **Event**.

**9. Notice.** Notice may be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand delivered or on the third day after deposit if sent certified mail. **Notice must be sent as follows:**

**If to City:**

Director of Parks and Recreation  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, TX 78469-9277  
(361) 880-3461  
FAX (361) 880-3864

**If to Moondogger Productions :**

John Segrest, President  
Moondogger Productions, LLC  
134 Alta Plaza  
Corpus Christi, Texas 78411

**10. Temporary Street Closures.** The street closure process will govern any necessary street closures. All street closures on a temporary basis are subject to the requirements of **City Ordinances**, Sections 49-15 to 49-18, as may be amended, and require the **City Council** to confirm the closures. The decision to confirm the closure of the streets is within the sole discretion of the **City Council** acting upon the application at the time the application is submitted.

**11. Parking.** **Moondogger Productions** will provide parking and signage for people with disabilities in close proximity to the entrances of the **Event** and its related activities defined on the **Premises** maps.

**12. Barricades, Traffic Signs.** **Moondogger Productions** must comply with traffic control plan approved by **City Traffic Engineer**. Street access to **Premises** may not be blocked or partially blocked without detour signage and prior alternate street access approved by the **City Traffic Engineer**.

**13. Signage and Advertising.** On all advertising for the Event, Lessee shall recognize City's contributions to the Event. Signage must comply with applicable City codes.

**14. Rest Rooms, Drinking Water and First Aid.** **Moondogger Productions** must provide adequate portable restrooms, including restrooms for people with special needs, and drinking water for the public as determined by the **Parks Director**. A first aid station must also be provided throughout the duration of the **Event** and its related activities.

**15. Insurance.** **Moondogger Productions 's Agent** must furnish to the **Risk Manager** proof of Commercial General Liability insurance for the length of the **Event** and its related activities protecting against liability to the public. The insurance must have a minimum policy limit of \$1,000,000 Combined Single Limit per occurrence for bodily and personal injury, death and property damage. Moondogger Productions may elect to include coverage for booth vendors under their General Liability policy. The Certificate of Insurance must indicate existence of inclusion of these participants. Moondogger Productions is required to provide a \$1,000,000 Combined Single Limit

Automobile Liability policy, providing coverage for owned, non-owned and hired vehicles. Subcontractors and vendors who will be loading or unloading equipment, temporary structures, carnival rides (if applicable), stages, bleachers, and any other associated materials to be utilized for the **Event** must have comparable insurance policies, which must be filed at least 2 weeks prior to each **Event**. **Moondogger Productions** must also furnish insurance in the form of an accident policy for volunteers with minimum limits of \$10,000 for death or dismemberment and minimum limits of \$5,000 for medical expenses. If alcohol is served at any of **Moondogger Productions Events** on **Premises** then liquor liability insurance in the amount of \$1,000,000 Combined Single Limit must be provided by the entity serving the alcohol. The **City** must be named as an Additional Insured on all liability policies. **Moondogger Productions** must furnish the Certificates of Insurance with applicable policy endorsements in at least the above minimum amounts to the **City's Risk Manager** two weeks prior to the non-exclusive use period each year. Fireworks vendor must provide proof of permit and certificate of insurance naming **City** as additional insured.

**Moondogger Productions** must require all volunteers to sign an accident waiver form that **Moondogger Productions** must keep on file. The **City Attorney** will approve the form. In the **Event** of accidents of any kind, **Moondogger Productions** must furnish the **Risk Manager** with copies of all reports of the accidents at the same time that the reports are forwarded to any other interested parties. In addition, **Moondogger Productions** must provide copies of all insurance policies to the **City Attorney** upon **City Manager's** written request. Said insurance must not be canceled, non-renewed or materially changed without 30 days prior written notice to the **Parks Director**.

**16. Indemnity. Moondogger Productions shall indemnify and hold City, its officers, agents and employees ("Indemnitees") harmless of, from, and against all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person or property to the extent any damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by an act or omission, negligence, or misconduct on the part of the Indemnitees or on the part of Moondogger Productions or any of its agents, servants, employees, contractors, vendors, patrons, guests, licensees, or invitees ("Indemnitors") entering upon the Premises pursuant to this Moondogger Productions Agreement, to use the Premises and those portions of Shoreline and streets that are closed to set-up and take-down, hold, attend, or participate in the Discover Downtown Music & Film Festival and associated activities, on the Premises, with the expressed or implied invitation or permission of Moondogger Productions, or when any injury or damage is the result, proximate or remote, of the violation by Indemnitees or Indemnitors of any law, ordinance, or governmental**

***order of any kind, or when any injury or damage may in any other way arise from or out of the improvements located on the Premises or out of the use or occupancy of the improvement to the Premises or the Premises itself by Indemnitees or Indemnitors, or when the injury or damage arise out of, or be caused, either proximately or remotely, wholly or in part, by an act or omission, negligence, or misconduct on the part of the Indemnitors in administering parade vendor permits.***

***These terms of indemnification are effective whether the injury or damage may result from the sole negligence, contributory negligence, or concurrent negligence of Indemnitees, and in all cases where Indemnitees' actions are directly related to the Event, but not if the damage or injury results from gross negligence or willful misconduct of Indemnitees.***

***Moondogger Productions covenants and agrees that if City is made a party to any litigation against Moondogger Productions or in any litigation commenced by any party, other than Moondogger Productions relating to this Moondogger Productions Agreement, Moondogger Productions shall defend City upon receipt of reasonable notice regarding commencement of the litigation.***

**17. Safety Hazards.** Moondogger Productions, upon written notice of identified safety hazards by the **Police Chief, Fire Chief, Parks Director or Risk Manager**, must correct the safety hazard, within six hours or other time frame included in the written notice of safety hazards.

**18. Pavement, Curbs, Sidewalks, Seawall.** Any work which involves holes or other changes in the pavement, curbs, sidewalks, or seawall, or Premises requires the prior written approval by **City Director of Engineering Services**, provided however, that no approval will be given if the work will require subsequent repairs by the **City**.

**19. Permits. A. Moondogger Productions** must require all vendors to obtain and comply with appropriate permits, including permits from the Alcoholic Beverage Commission for the sale of alcohol, from the **City** for consumption and sale of alcoholic beverages on park land, and must comply with all requirements of the **City-County Health Department** for the sale of foods and the protection of the public welfare. Moondogger Productions shall be responsible for payment of all City health permit /vendor and related fees. For example, the temporary food service establishment permit fees established in City Code of Ordinances Section 19-33. Any vendor that sells alcoholic beverages must furnish proof of Liquor Liability Insurance in the same amounts set out herein. Said Certificate of Insurance must be furnished to the **Risk Manager** at least two weeks prior to the starting date of the **Event** annually. Other permits **Moondogger Productions** must obtain a Temporary Promotional **Event** Permit

from Building Inspection.. **Moondogger Productions 's Agent** shall promptly notify the **Parks Director** of any special conditions imposed by any permitting agency.

B. **Fireworks.** There are no fireworks planned for the 2012 Event. If fireworks, Moondogger Productions or its vendor must obtain permit from the Corpus Christi Fire Department and provide proof of applicable insurance described above and naming City as additional insured.

C. **Licenses.** Moondogger Productions is solely responsible for obtaining licenses and permission from copyright owner(s) prior to the performance of music or film showing at the Event.

20. **Clean Up.** **Moondogger Productions** must require all food and beverage vendors to clean a designated zone adjacent to their respective booths at regularly scheduled intervals. **Moondogger Productions** may designate the zone, but it will not be less than 10 feet by 20 feet in the immediate area around each food and beverage booth. The clean up will be hourly and immediately after closing the **Event** each day. All trash cleaned up must be properly deposited in a trash bag provided by **Moondogger Productions** and taken to a location designated by **Moondogger Productions**. **Moondogger Productions** may hire and work its own clean up crew during and after the **Event**. If the **Parks Director** determines that additional clean up is necessary, **Parks Director** will give **Moondogger Productions 's Agent** 2 hours notice to increase services; and if it is still unsatisfactory, **Parks Director** may authorize use of **City** workers.

**Moondogger Productions** must install screens, approved by **City** Director of Storm Water Operations or designee, across all storm water inlets along Shoreline and within any closed streets within the Premises. Drainage must not be blocked. **Moondogger Productions** must remove the screens within the non-exclusive use period after the close of the **Event**. However, **Moondogger Productions** must remove screens (along with any trash that has accumulated over the screens) immediately if heavy rain is imminent, or upon the direction of the **City** Director of Storm Water Operations or her designee.

21. **Construction.** The construction work for displays and stages must be conducted in accordance with **City** building codes and restrictions. Any other construction requires prior approval by **Parks Director** in writing.

22. **Temporary Buildings.** **Moondogger Productions** must receive prior written approval from the **Parks Director** to place any temporary buildings on the grounds of the **Premises**. Otherwise, all temporary buildings moved onto **Premises** for the **Event** must be placed and remain on trailers to promote expeditious removal. All these buildings must be removed within the non-exclusive use time period.

23. **Electrical & Water Services.** **City** does not provide electrical service on the Premises. A Temporary Promotional **Event** Permit from the **City** Building Inspection Department is required in order to install electrical service for the **Event**. Further, a

Certificate of Occupancy, which involves inspections, must be completed by the proper inspector, to have all temporary services, such as, food, electrical, plumbing, tents, and structures, inspected. It is the responsibility of **Moondogger Productions** to call each inspector for an appointment to inspect and get approval for each temporary service before the **Event** begins. **Parks Director** will provide access to water from park water facilities.

**24. Permissible Vendor Location Markings.** No paint or semi-permanent markings will be permitted which in any way obliterate or deface any pavement markings or signs or Premises heretofore existing for the guidance of motor vehicles or pedestrians. Chalk markings may be used to pre-mark locations on the sidewalk or street. (Painted markings of any type will only be permitted in grassy areas).

**25. Dispute Resolution.** **City** and **Moondogger Productions** agree that any disputes which may arise between them concerning this **Agreement**, such as determining the amount of damage to **City** property occurring as a result of the **Event**, or regarding an invoiced amount, will be submitted for determination and resolution, first to the **Parks Director**, with a right to appeal to the **City Manager**. The decision of the **City Manager** will be final, unless that decision is appealed to the **City Council** by giving written notice of appeal to the **City Secretary** within ten (10) days after the written decision of the **City Manager** has been sent to **Moondogger Productions**. In the **Event** of appeal, the decision of the **City Council** will be final. Upon a resolution of the dispute, either by agreement of the parties or as the result of an appeal, the disputed amount will be considered due and payable to the **City** within ten (10) calendar days of the resolution. This **Agreement** in no way waives **Moondogger Productions** rights to seek other legal remedies during the appeals process.

**26. Emergency Vehicle Lanes.** **Moondogger Productions** must at all times maintain emergency vehicle lanes upon the **Premises** as may be designated by **City Fire Chief**. These lanes must be kept clear of all obstructions.

**27. Assignment.** **Moondogger Productions** may not assign or transfer this **Agreement** nor sublease the whole or any part of the **Premises** or make any alteration therein without the prior written consent of the **City Manager**.

**28. Breach, Termination.** Any failure on the part of **Moondogger Productions** to perform any of the covenants contained in this **Agreement**, or any breach of any covenant or condition by **Moondogger Productions** entitles **City** to terminate this **Agreement** without notice or demand of any kind, notwithstanding any license issued by **City** and no forbearance by **City** of any prior breach by **Moondogger Productions** is a waiver by or estoppel against **City**. In case of termination **City** is entitled to retain any sums of money theretofore paid by **Moondogger Productions** and the sums inure to the benefit of **City** as a set-off against any debt or liability of **Moondogger Productions** to **City** otherwise accrued by breach hereof.

**29. Right of Moondogger Productions to Use Public Streets.** **Moondogger Productions** acknowledges that the control and use of public streets is declared to be



inalienable by the **City** and except for the use privilege granted herein, this **Agreement** does not confer any right, title, or interest in the public property described herein. The privilege to use the **City** property granted herein is subject to the approval of the **City** Council as required by ordinance and the compliance by **Moondogger Productions** with the terms and conditions contained within this **Agreement**.

**30. Not Partnership or Joint Venture.** This **Agreement** may not be construed or deemed by the parties hereto as a partnership, joint venture, or other relationship that requires the **City** to cosponsor or incur any liability, expense, or responsibility for the conduct of the **Event** or associated activities. Payments received from **Moondogger Productions** by the **City** are compensation for provision of **City** services as described herein and for the right of **Moondogger Productions** to use public property for the limited purpose described herein.

**31. City Services Subject to Appropriation.** **Moondogger Productions** recognizes that the services provided by the **City** pursuant to this **Agreement** are subject to the **City's** annual budget approval and appropriation. The continuation of any contract after the close of any fiscal year of the **City**, is subject to appropriations and budget approval.

**32. Compliance with Laws.** **Moondogger Productions** must comply with all applicable federal, state, and local laws and regulations, including without limitation compliance with Americans with Disabilities Act requirements, and compliance with **City** noise ordinance, all at **Moondogger Productions**'s sole expense and cost.

**33. Non-discrimination.** **Moondogger Productions** warrants that they are and will continue to be an Equal Opportunity Employer and hereby covenants that no employee, participant, invitee, or spectator will be discriminated against because of race, creed, sex, handicap, color, or national origin.

**34. Fence.** **Moondogger Productions** may provide a temporary six-foot (6') chain link fence, with gates for access, upon prior approval of the Parks Director. The fence will help improve security, crowd control, litter control, and keep bicycles, skateboards, animals, and personal coolers out of the **Event** area. **Exhibit A** may be revised to enlarge or decrease the fenced area in accordance with **Moondogger Productions**'s needs upon Parks Director's concurrence. If **Exhibit A** is revised, new **Exhibit A** will be filed with the **City** Secretary and supersede the existing **Exhibit**. The new **Exhibit A** becomes effective upon filing with the **City** Secretary.

**35. Admission Fee.** **Moondogger Productions** may charge an admission fee.

**36. Public Safety.** **Moondogger Productions** must provide uniformed Security Officers during the **Event**, and after the **Event** closes each night until it opens the next day. **Moondogger Productions** will assign the Security Officers duties. Security Officer means sworn peace officers directly paid by **Moondogger Productions**. provided, however, the **Police Chief** may determine that a security guard service will provide adequate security for the **Event**, or portions of the **Event**. If the **Police Chief** allows a security guard service to provide security, the term "security officer" will include

a licensed security guard as well as a sworn peace officer. If the **City Police Chief** determines it is necessary, the Police Chief will assign Police Officers to provide off-site crowd and traffic control for the **Event** as needed and include costs of police officers in the Direct Costs per Section 7 above. The Police Officers will be assigned duty stations by the **Police Chief**, or designee. Notwithstanding anything herein, the **City Manager** or **Police Chief** reserve the right to cancel the **Event** at no cost or penalty to the **City**, without prior notice, if the **City Manager** or **Police Chief** determines in his sole discretion that cancellation is necessary to protect the public safety.

**37. Entirety Clause.** This **Agreement** and the incorporated and attached **Exhibits** constitute the entire **Agreement** between the **City** and **Moondogger Productions** for the use granted. All other **Agreements**, promises, and representations, unless contained in the **Agreement**, are expressly revoked, as the parties intend to provide for a complete understanding within the provisions of this **Agreement** and its **Exhibits**, of the terms, conditions, promises, and covenants relating to **Moondogger Productions**'s operations and the **Premises** to be used in the operations. The unenforceability, invalidity, or illegality of any provision of the **Agreement** does not render the other provisions unenforceable, invalid, or illegal.

Executed in Duplicate Originals on April 6, 2012.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Armando Chapa  
City Secretary

\_\_\_\_\_  
Ronald L. Olson  
City Manager

Legal Form Approved April 17, 2012

Lisa Aguilar  
\_\_\_\_\_  
Lisa Aguilar  
Assistant City Attorney  
for City Attorney

**MOONDOGGER PRODUCTIONS, LLC**

By: \_\_\_\_\_  
Name: JOHN SEGREST



## EXHIBIT B

### 2012 Agreement Event Locations, Dates & Summary

#### 1. Description of Premises to be used for the Event

Former Memorial Coliseum grounds, and adjacent parking lot, from May 9 through May 19, for the following events.

#### **Description of Event on Friday May 18, 2012: From 6:30 p.m. to 11:00 p.m**

Free showing of PG-rated movie.

#### **Description of Event on Saturday May 19, 2012, from 1:00 p.m. to 10:30p.m.:**

Paid admission to Music festival, food and beverage sales include beer and wine, art exhibit and sales, kid's area, and other activities as agreed to by the Parks Director; paid admission.

|                |          |
|----------------|----------|
| TOTAL ESTIMATE | \$400.00 |
|----------------|----------|

\*Moondogger Productions may or may not use all services estimated on this sheet. There may be additional services requested by Moondogger Productions which may require a revised estimate. These estimates do not include costs of emergency calls. Actual costs for emergency calls will be billed directly to and paid by Moondogger Productions.