

2013 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 Elizabeth Guarneri, 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. **Promoter** - means Elizabeth Guarneri.
- f. **Event** - means the music event to be held on March 16, 2013 and March 17, 2013. The specific types of activities at the Event include the following: live music 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 of approximately 200 feet by 175 feet size area of McGee Beach, more fully described on the attached and incorporated **Exhibit A**.
- 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**. Promoter 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 Promoter the privilege of using the **Premises**, to conduct its paid admission **Event** on the dates March 16, 2013 and March 17, 2013, for the limited times listed on Exhibit B.

4. Event Layout Diagram. Promoter 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**.

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

6. Use of other City property. Promoter may arrange for use of other City property such as Cole Park amphitheater through separate permit and additional permit fee.

7. Payment of City Costs. In consideration for the use of **City** property, **Promoter** 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 **Promoter** has disputed. An invoiced amount will be considered to be in dispute upon receipt, by the Parks Director, of a written notice from **Promoter**. The written notice must detail the basis for the disputed claim and must be received by **Parks Director** within twenty (20) calendar days of **Promoter's** receipt of **City** invoice. Resolution and payment of any disputed amount(s) will be governed by Section 25.

The **Parks Director** will invoice **Promoter** 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 **Promoter**, 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 Promoter, 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 Promoter, its employees, volunteers, vendors, contractors, or subcontractors. If the sod at the Premises is damaged, Promoter agrees to either replace the sod with similar product, or to reimburse the City's costs for sod replacement. Parks Director will provide Promoter a punchlist of damage to City property within seven (7) days after Promoter has vacated the City property. Promoter must repair damages within

ten (10) days after receipt of the punchlist. If Promoter fails to restore all items on the punchlist, Parks Director may do so and invoice Promoter for direct costs. Promoter shall be responsible to replace any turf damage due to the use for these Events. Promoter 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. (**Promoter** 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, Promoter 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 Promoter and provided by **City** are Promoter'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**. Promoter 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. Promoter failure to pay the undisputed charges on **City's** invoice within 30 days after submittal to **Promoter** shall result in a late payment fee being assessed against **Promoter**. 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.** Promoter 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 **Promoter** 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
FAX (361) 880-3864

If to **Promoter** :

Elizabeth Guarneri
4801 Jean Street
Corpus Christi 78414

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. **Promoter** 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. **Promoter** 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. **Promoter** must provide adequate portable rest rooms, 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 and Volunteer Waivers. **Promoter's Agent** must furnish to the **Risk Manager** proof of insurance listed on the attached Exhibit. **Promoter** 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 **Event**.

Promoter must require all volunteers to sign an accident waiver form that **Promoter** must keep on file. The **City Attorney** will approve the form. In the **Event** of accidents of any kind, **Promoter** 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, **Promoter** 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. **Promoter 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 Promoter or any of its agents, servants, employees, contractors, vendors, patrons, guests, licensees, or invitees ("Indemnitors") entering upon the Premises pursuant to this Promoter 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 Promoter's events at McGee Beach and any other City locations, and associated activities, with the expressed or implied invitation or permission of Promoter, 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.

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

17. Safety Hazards. Promoter, 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. Promoter 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. Promoter 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 **Promoter** must obtain a Temporary Promotional **Event** Permit from Building Inspection.. **Promoter** shall promptly notify the **Parks Director** of any special conditions imposed by any permitting agency.

B. Music Licenses. Promoter is solely responsible for obtaining licenses and permission from copyright owner(s) prior to the performance of music or other copyrighted material at the Event.

20. Clean Up. **Promoter** must require all food and beverage vendors to clean a designated zone adjacent to their respective booths at regularly scheduled intervals. **Promoter** 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 **Promoter** and taken to a location designated by **Promoter**. **Promoter** 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 **Promoter's Agent** 2 hours notice to increase services; and if it is still unsatisfactory, **Parks Director** may authorize use of **City** workers.

Promoter 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. **Promoter** must remove the screens within the non-exclusive use period after the close of the **Event**. However, **Promoter** 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. **Promoter** 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 **Promoter** 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 **Promoter** 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 **Promoter**. 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 **Promoter** rights to seek other legal remedies during the appeals process.

26. Emergency Vehicle Lanes. **Promoter** 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. **Promoter** 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 **Promoter** to perform any of the covenants contained in this **Agreement**, or any breach of any covenant or condition by **Promoter** 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 **Promoter** is a waiver by or estoppel against **City**. In case of termination **City** is entitled to retain any sums of money theretofore paid by **Promoter** and the sums inure to the benefit of **City** as a set-off against any debt or liability of **Promoter** to **City** otherwise accrued by breach hereof.

29. Right of Promoter to Use Public Streets. Promoter 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 Promoter 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 Promoter by the City are compensation for provision of City services as described herein and for the right of Promoter to use public property for the limited purpose described herein.

31. City Services Subject to Appropriation. Promoter 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. Promoter 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 Promoter's sole expense and cost.

33. Non-discrimination. Promoter 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. Promoter may provide a temporary four-foot (4') construction fencing, 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 Promoter's needs upon Parks Director's concurrence.

35. Admission Fee. Promoter may charge an admission fee, not to exceed \$15 per day of Event.

36. Public Safety. Promoter must provide uniformed Security Officers during the Event, and after the Event closes each night until it opens the next day. Promoter will assign the Security Officers duties. Security Officer means sworn peace officers directly paid by Promoter, 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 **Promoter** 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 **Promoter** '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 _____, 2013.

ATTEST:

CITY OF CORPUS CHRISTI

Armando Chapa
City Secretary

Ronald L. Olson
City Manager

Elizabeth Guarneri

By: Elizabeth M. Guarneri
Date: 01/28/2013

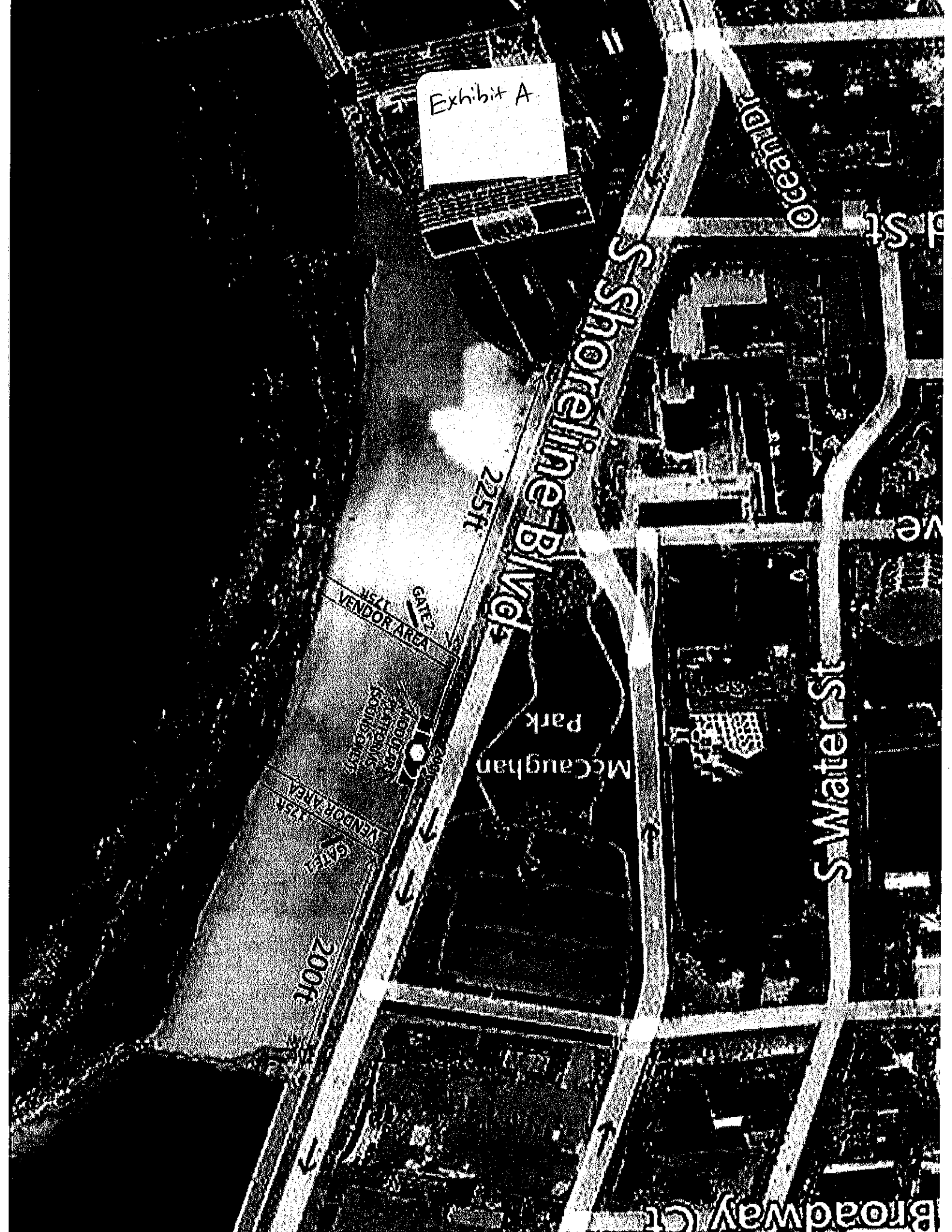
STATE OF TEXAS §
COUNTY OF NUECES §

This instrument was acknowledged before me on January 28, 2013, by Elizabeth Guarneri.

Jeannie Holland
Notary Public, State of Texas



Exhibit A



200ft

225ft

GATE 2
VENDOR AREA

GATE 1
VENDOR AREA

McCaughan
Park

Broadway Ct

S Water St

S Shoreline Blvd

Cream St

Ve

d St

EXHIBIT B

**2013 Agreement
Event Locations, Dates & Summary**

Description of Premises to be used for the Event

Approximate 175 feet by 200 feet area of McGee Beach as depicted on Exhibit A, on March 16 2013 and March 17, 2013, for the following events.

Description of Event on Saturday March 16, 2013: Set up at 8:00 am.

From Noon to 10:00 p.m: Paid admission entrance for live music event

Description of Event on Sunday March 17, 2012: Set up at 8:00 am.

From Noon to 10:00 p.m.: Paid admission entrance to live music event

EXHIBIT**I. INSURANCE REQUIREMENTS**

A. Promoter may not use McGee Beach under this Permit until all insurance required herein has been obtained and approved by the City. Promoter must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.

B. Promoter must furnish to the Risk Manager or designee, two (2) copies of Certificates of Insurance, showing the following minimum coverage by insurance company(s) acceptable to the Risk Manager or designee. The City must be named as an additional insured for all liability policies, and a blanket waiver of subrogation in favor of the City is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day written notice of cancellation, non-renewal, material change or termination is required on all certificates	Bodily Injury and Property Damage Per occurrence aggregate
COMMERCIAL GENERAL LIABILITY including: <ol style="list-style-type: none"> 1. Commercial Form 2. Premises – Operations 3. Products/ Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors 7. Personal Injury – Advertising Injury 	\$1,000,000 Per Occurrence
LIQUOR LIABILITY <ol style="list-style-type: none"> 1. Vendors providing and / or selling alcohol 	\$1,000,000 Per Occurrence
AUTOMOBILE LIABILITY -- Owned, Non-owned or rented or leased vehicles	\$500,000 COMBINED SINGLE LIMIT

- If your insurance company uses the standard ACORD form, the **cancellation clause** (bottom right) **must be amended** by adding the wording "changed or" between "be" and "canceled", and deleting the words, "endeavor to", and deleting the wording after "left". In the alternative, a copy of a policy endorsement with the required cancellation language is required.
- The **name of the event, including exact dates including move-in and move out dates** shall be shown under the Description of Operations/ Locations / Vehicles/ Special Items.
- At a minimum, a **30-day written notice** to the Risk Manager and Parks and Recreation Director of cancellation, material change, non-renewal or termination and a **10 day written notice** of cancellation for non-payment of premium is required.

2013 ins. req.

Parks & Recreation Dept.

Spring Break Music Festival – McGee Beach

01/11/2013 ds Risk Management