



METROPOLITAN PARK
1410 Gator Bowl Blvd
Jacksonville, Florida 32202
904.630.0837 fax 904.355.4857

METROPOLITAN PARK LICENSE AGREEMENT

License Preparation Date:	Event Date:
Organization:	Contact Name:
Address:	Phone:
City/State/Zip Code:	E-Mail:
Type of Event:	Expected Attendance:
Load-In Date/Time:	Load-Out Date/Time:

WITNESSETH:

WHEREAS, the City of Jacksonville (the “City”) is the owner of certain property known as Metropolitan Park, located in Jacksonville, Duval County, Florida, (the “Park”); and

WHEREAS, the City has the authority to issue and/or execute, and _____ (the “Applicant”) desires the issuance and/or execution of, a permit/agreement for the utilization of the Park, which Park Applicant has inspected and hereby acknowledges to be sufficient for its intended purpose and/or use contemplated hereunder; and

WHEREAS, Applicant warrants to the City that it is qualified and authorized to do business in the State of Florida and City of Jacksonville, Florida, and has obtained and maintains the proper certification, licensure, insurance, permits and all other requirements pursuant to federal, state and local laws, statutes, ordinances, rules and regulations necessary to conduct any and all activities contemplated herein, and to satisfactorily perform its obligations as herein required;

NOW, THEREFORE, for and in consideration of the Park and other valuable consideration, the legal sufficiency of which is hereby acknowledged by both parties, and of the mutual covenants herein contained, the parties, as indicated by their authorized representatives’ signatures below, hereby agree to the terms and conditions set forth herein (each of the above-stated “WHEREAS” clauses or recitals is true and correct, and, by this reference, is incorporated herein and made a part hereof):

A. PARK, PREMISES & EVENT SCHEDULE:

1. The above recitations are true, accurate and correct and are hereby incorporated herein by this reference.

2. The areas and facilities of the Park which Applicant is entitled to License and/or use hereunder are more particularly described as (check appropriate boxes) entire park marina Fire museum entrance ~~Pavillion~~ Pavilion/main stage seating field back side of pavilion stage/field Children's area Other _____ (the "Premises"), which Premises Applicant acknowledges to be sufficient for its intended purpose and/or use contemplated hereunder.

3. Applicant may use and have access to the Premises for a period, commencing at _____, on the _____ day of 20__, and ending at _____, on the _____ day of 20__ ("Event Duration"), which Event Duration shall include Event set-up, removal and clean-up. Where a performance, function or event requires usage after the stipulated termination time, Applicant is required to pay an additional charge equal to **twenty percent (20%)** of the rental amount due hereunder for each hour of usage after such stipulated termination time. **Applicant agrees that all music or other performances must stop by 11 p.m. for events held on a Friday, Saturday, or Sunday, if followed by a Monday holiday, or 10 p.m. on a non-holiday preceding Sunday. Applicant agrees that alcohol sales must stop 30 minutes prior to close of Event.**

B. AUTHORIZED USE, TERMS & CONDITIONS:

1. The Premises are to be used by Applicant for _____ (the "Event"), and for no other purpose whatsoever, unless prior written approval is requested in writing by Applicant and given by the City, which approval shall not be unreasonably withheld, conditioned, or delayed. Applicant acknowledges that, except as is explicitly stated herein, the City makes no guarantees to Applicant, express or implied, as to the rights, uses and privileges granted hereunder or as to any pecuniary gain that Applicant may have intended to result therefrom. Applicant also acknowledges that its rights and privileges to conduct the Event contemplated hereunder shall in no way be construed as affording Applicant any exclusive right, privilege and preference as to the Event or any desired annual scheduling of the same.

2. Applicant agrees to pay to the City as rent, costs, expenses and taxes for the use of the Premises the following sums:
 - (a) Rental fee will be \$_____, plus tax (if applicable). The amount of ___ percent (___%) of the entire rental fee, \$_____, is due 10 business days from receipt of this Agreement, or 20 business days prior to Event date, whichever occurs first. In order to reserve the specific date indicated above, Applicant must execute and return to the City three (3) originals of this Agreement, together with the rental fee, and a Damage Deposit of \$_____, no later than 10 business days from receipt of this Agreement, or 20 business days prior to Event, whichever occurs first. The Damage Deposit shall be applied against the fees, costs, expenses, charges and/or delinquent payments described herein, and against any costs of repair or replacement of damages to the Park that directly or indirectly result from the Event, whether caused by Applicant or Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors or performers, or others on the Premises at Applicant's direction or invitation. The Damage Deposit, to the extent unused, shall be returned to Applicant upon final settlement of this Agreement. The City's use of the Damage Deposit or any other sum

described herein shall in no way constitute a waiver of any other right the City may have at law or equity. The balance of the rent, \$ _____, plus expenses, is due at close of Event.
Exception: _____

- (b) Event Staffing (General) - The minimum guaranteed rental amount does not include costs and expenses for equipment, applicable taxes, stage hands, sound/light technicians, electricians, park maintenance, ticket sellers, ticket takers, ushers, set-up or clean-up of equipment, police or fire and rescue personnel, sound monitoring costs, T-shirt security, or similar materials, services or personnel. The number and identity of such service persons and equipment to be used in these capacities shall be pre-determined by mutual written agreement of the parties. A schedule of prices for some of the services and additional equipment is attached hereto and incorporated herein as **Exhibit 1**.

Exception: _____

- (c) Event Staffing (Police, Fire, Sound Monitoring, and T-shirt Security) - The staffing levels necessary for police shall be determined by the Sheriff or his designee. The fire and rescue staffing levels required shall be determined by the Director/Fire Chief or his designee. The staffing levels for sound monitoring shall be determined by the City's Environmental Quality Division Noise Pollution Section. The T-shirt security staffing levels shall be determined by the Park Manager or Special Events Coordinator and Jacksonville Sheriffs' Office. The parties agree that the decisions of the Sheriff, Director/Fire Chief, Park Manager and Special Events Coordinator or their respective designees shall be final and binding.

- (d) APPLICANT SHALL BE FINANCIALLY RESPONSIBLE FOR ALL CHARGES FOR ALL MATERIALS, PERSONNEL, SERVICES AND EQUIPMENT THAT THE CITY FURNISHES FOR THE EVENT. APPLICANT SHALL ALSO BE FINANCIALLY RESPONSIBLE FOR ALL CHARGES FOR ALL MATERIALS, PERSONNEL, SERVICES AND EQUIPMENT THAT ARE PROVIDED BY NON-CITY AGENCIES ASSOCIATED WITH THIS EVENT (I.E., STAGEHANDS, SOUND/LIGHT COMPANIES, USHERS). FOR POLICE, FIRE AND RESCUE, AND SOUND MONITORING STAFFING BY ENVIRONMENTAL QUALITY DIVISION EMPLOYEES SO FURNISHED, APPLICANT SHALL PRE-PAY SAID CHARGES IN CASH, CASHIERS CHECK OR BY CERTIFIED CHECK NO LATER THAN 72 HOURS BEFORE THE EVENT, AND APPLICANT'S FAILURE OR OTHERWISE REFUSAL TO DO SO SHALL RESULT IN THE IMMEDIATE TERMINATION OF THIS AGREEMENT, THE CANCELLATION OF ANY EVENTS CONTEMPLATED HEREUNDER AND THE FORFEITURE OF ANY AND ALL SUMS THAT APPLICANT HAS PAID TO THE CITY. IF APPLICANT'S FORFEITED SUMS ARE NOT SUFFICIENT TO REMEDY ALL COSTS, EXPENSES AND/OR FEES INCURRED BY THE CITY AS A RESULT OF SAID TERMINATION AND/OR CANCELLATION, APPLICANT SHALL REIMBURSE THE CITY FOR THE SAME. WITHIN 30 DAYS AFTER THE DATE OF THE CITY'S NOTICE OR INVOICE, APPLICANT SHALL BE RESPONSIBLE FOR AND SHALL PAY ANY AND ALL

EXPENSES, COSTS, FEES, CHARGES AND/OR DAMAGES THAT THE CITY INCURS AS A DIRECT OR INDIRECT RESULT OF THE EVENT.

(e) Concessions:

- (i) If the Event is an admissions event utilizing the entire Metropolitan Park (i.e., a Ticketed Event), _____% of all concessions receipts shall be paid to the City, the payment of which must be made by the Applicant immediately upon the close or termination of the Event. Inventory must be counted in and out with a Metropolitan Park Representative. The other option is **\$0.75** per head based on actual attendance numbers obtained from the turnstile count at the end of the Event. An estimated fee of \$_____ (estimated attendance of _____ taken from the Applicant's application X \$0.75) will be paid in advance. If, once the actual numbers have been obtained, a refund is due, it will be sent to the Applicant. Conversely, if attendance proves to be higher than the estimate, this balance is due at close of Event. This fee shall be paid to the City, the payment of which must be made by the Applicant **10 business days from receipt of this Agreement, or 20 business days prior to Event, whichever occurs first**. Applicant shall arrange and pay for the printing of tickets, the form and contents of which in any event shall be subject to approval by City. All tickets shall be numbered consecutively. The City shall be entitled to _____ complimentary tickets for promotional purposes. Under no circumstances shall any tickets be advertised or sold prior to the full execution of this Agreement and prior to the Applicant's performance of the requirements indicated in Paragraphs (A)(1), (B)(2), (8) and (13), herein. The City will have access to all box office counts and reserves the right to cap ticket sales should ticket sales exceed Park capacity.
- (ii) If the Event is a non-admission event (i.e., a Non-Ticketed Event) and is either Privately or City co-sponsored or Applicant is a non profit, tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and which also is not a foundation under Section 509(a) of the Code, _____% of the gross concession receipts shall be paid to the City, the payment of which must be made by Applicant immediately upon the close or termination of the Event. Inventory must be counted in and out with a Metropolitan Park Representative. The other option is **\$0.50** per head based on actual attendance numbers obtained from the turnstile count at the end of the Event. An estimated fee of \$_____ (estimated attendance of _____ taken from the Applicant's application X \$0.50) will be paid in advance. If, once the actual numbers have been obtained, a refund is due, it will be sent to the Applicant. Conversely, if attendance proves to be higher than the estimate, this balance is due at close of Event. If the option of a concession buyout fee of _____ is chosen, this fee shall be paid to the City, the payment of which must be made by the Applicant **10 business days from receipt of this Agreement, or 20 business days prior to Event, whichever occurs first**. Question to Tonisha for discussion- is this amount less if the applicant does not use all of the park?
- (f) Applicant's failure to timely make any of the payments required hereunder shall constitute a material breach and shall result in the immediate termination of this Agreement. All fees, costs and expenses, including, without limitation, attorney's fees, incurred by the City in the collection of any payment due hereunder shall be reimbursed by Applicant.

3. Applicant (including all artists, performers, entertainers, sound technicians, employees, and subcontractors of Applicant, and any others participating in production of the Event) shall comply and ensure compliance with the following provisions during the Event Duration:

(a) The hours of event production and sound checks utilizing amplified sound in the Park (“Permitted Hours”) is restricted to:

1. Friday – 12 p.m. to 11 p.m.
2. Saturday - 11 a.m. to 11 p.m.
- ~~3. Sunday – 12 p.m. to 9 p.m. (unless prior to a~~
3. ~~4.~~ Sunday – 12 p.m. to 9 p.m. (unless prior to a Monday which is a holiday in which case the permitted hours are from 11 a.m. to 11 p.m.)
5. Weekday events, other than Holiday events, are 12 p.m. to 10 p.m.
6. ~~No sound~~ Sound checks shall begin not earlier than the later of 9 a.m. on the day of the scheduled Event; or four (4) hours prior to the scheduled beginning time on each day of an Event.

(b) The maximum allowable sound level, as measured no more than 100 feet perpendicular from the stage at the sound board, shall not exceed the following Broadband and Octave Bands levels limits during the applicable time frames:

Time: Permitted hours before 10 p.m.

Broadband, dB (A)	105	
Octave Band dB		
31.5	95	
63	110	
125	100	
250	95	85

Time: Permitted Hours after 10 p.m.

Broadband, dB (A)	105	95
Octave Band dB		
31.5	95	85
63	110	100
125	100	100 90
250	95	95 85

Time: All non- permitted hours

Normal provisions of Chapter 368, Ordinance Code and EPB Rule 4 apply

If Applicant complies with the sound level restrictions above during the Permitted Hours, Applicant shall not be liable for any offsite decibel level noise exceedance pursuant to Chapter

368, *Ordinance Code*, or Environmental Protection Board Rule 4 during the stated time periods.

- (c) Alternately, in lieu of the restrictions on Broadband and Octave Band sound levels set forth in subsection (a), an Applicant may exceed these limits at the soundboard provided that Applicant utilizes an electro-acoustical “steering technique” to redirect sound waves away from the St. Johns River. If electing to utilize such technique, Applicant shall comply at all times with the offsite sound level limitations set forth in Chapter 368, *Ordinance Code*, and Environmental Protection Board Rule 4 and shall be liable for any offsite violation thereof.
- (d) Applicant shall be responsible for the sound monitoring costs associated with the Environmental Quality Division staffing and monitoring of the Event.
- (e) The Event shall occur no longer than 16 hours a day, including time for sound check.
- (f) ~~At the time that~~ at least ten (10) business days prior to the Event, Applicant submits an executed license agreement, he or she shall also shall submit a certified check, made payable to the City of Jacksonville for \$10,000.00 as a Noise Pollution Compliance Fee. The certified check shall be deposited into a non-interest bearing escrow account until the Event is held. Alternately, a letter of credit or surety bond may be presented at least ten (10) business days prior to the Event as a deposit for the Noise Pollution Compliance Fee. If no violations pursuant to subsections (a) or (b) are recorded by the Environmental Quality Division, the Noise Pollution Compliance Fee shall be returned to the Applicant within ten (10) business days after the Event.

However, if the Environmental Quality Division measures onsite violations under subsection 3(a) above, or offsite violations under subsection 3(b) above, the following penalties will be deducted from the Noise Pollution Compliance Fee:

<u>Violation</u>	<u>Penalty</u>
1 st	Warning
2 nd	\$1,000.00
3 rd	\$3,000.00
4 th	\$3,000.00
5 th	\$3,000.00

Each violation is cumulative so that if a 5th violation occurs, the total penalty assessed shall be \$10,000.00. If the City (through the Environmental Quality Division monitoring staff) records more than five (5) violations during an event, the City shall have the right to “pull the plug” and the Event shall terminate. For purposes of establishing violations of Environmental Protection Board Rule 4, Environmental Quality Division monitoring staff shall allow no less than three (3) minutes between recorded violations.

- (g) No more than two (2) additional or temporary stages will be permitted for the Event. The additional temporary stages shall be set to face away from the St. Johns River. The location and arrangement of the stages and sound systems shall be in accordance with the Stage Configuration Map attached hereto as **Exhibit 2**. Sound attenuation blankets or sound walls shall be erected at the rear of any temporary stages. Such temporary stage installations shall

be installed in such a manner so as to minimize the noise impact on surrounding residential properties.

4. Applicant shall not assign this Agreement or any rights hereunder or sublet the Premises without the express prior written consent of the Division Chief of Special Events (the "Chief") or his/her designee.
5. In the event that the Premises are not vacated and cleaned up by Applicant at the end of the Event Duration, then the City is hereby authorized to remove from the Premises, at the expense of Applicant, all goods, wares, merchandise and property of any and all kinds and descriptions placed or permitted therein by Applicant and which may be then occupying the same, and City shall not be liable for any damage or loss to such goods, wares, merchandise or other property which may be sustained either by reason of such removal or of the place to which it may be removed. Applicant hereby expressly releases City from any and all such claims for damages of whatsoever kind or nature and agrees to defend, indemnify and hold City harmless at Applicant's expense as to any claims for damages by third parties having interests in such goods, wares, merchandise and property, including costs and attorney's fees.
6. Applicant shall: (i) use and occupy the Premises in a safe and careful manner; (ii) comply with all federal, state and local laws, statutes, rules, regulations and ordinances; (iii) use the Premises solely for the purposes provided above; (iv) not permit the Premises, or any part thereof, to be used for any unlawful purpose or in any manner that may result in or cause harm and/or damage to persons or property; (v) not post or exhibit or allow to be posted or exhibited signs, advertisements, show-bills, lithographs, posters or cards of any description inside or in front of, or on any part of the Premises or its facilities, except with the prior written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed; and (vi) deliver up to the City the Premises in as good a condition and repair as the same shall be found at the beginning of the Event Duration. Additionally, Applicant:
 - (a) assumes all costs arising from the use of patented, trademarked or copyrighted materials, equipment, devices, processes, or dramatic rights used on or incorporated in the conduct of the Event. Applicant shall defend, indemnify and hold City harmless at Applicant's expense from all suits, actions, proceedings, damages, costs and expenses in law or equity, including attorney's fees, for or on account of any patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights furnished or used by Applicant or its employees, invitees, licensees, contractors, assignees, performers, contestants and exhibitors, in connection herewith.
 - (b) shall not alter landscaping, fencing or any permanent structure on the Premises.
 - (c) shall not obstruct ingress and egress to and from the Premises.
 - (d) acknowledges that the City shall have the sole right to collect and have the custody of articles left at the Premises by persons attending any Event given or held on the Premises, and

Applicant or any person in Applicant's employ shall not collect or interfere with the collection or custody of such articles.

- (e) acknowledges that the City reserves the right through its Director/Fire Chief, Park Manager, Special Events Coordinator, Sheriff or its other legal representatives, including, without limitation, its police and fire and rescue, to eject any persons reasonably deemed violent or otherwise dangerous to health, safety and welfare. In addition, the City may immediately terminate the Event if the National Weather Service issues a severe weather warning, or imminent severe weather conditions develop in the area indicating a risk to public safety. Applicant hereby waives any rights and all claims for damages against the City that may result from the exercise of the rights reserved herein.
 - (f) represents and warrants to the City that Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors and performers by their speech, song, music, conduct or manner will not violate or incite others to violate any statute, law, ordinance, rule, regulation or order of any federal, state, municipal or other governmental authority.
7. The City and its officers, agents and employees engaged in the operation and maintenance of the Premises reserve the right to enter upon and to have free access to the Premises at any and all times, which reservation is hereby acknowledged and agreed to by Applicant.
8. Applicant shall defend, indemnify and hold City harmless from any and all losses, damages, injuries, costs, or expenses of every kind or nature whatsoever, including attorney's fees, without limit as to amount, occasioned by or in any manner arising from operations of Applicant on or about the Premises or occasioned by any wrongful act, omission, neglect, or other wrongdoing of Applicant or Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors, performers or other persons contracting with Applicant, whether willful or negligent.
9. Applicant, at its sole cost and expense, shall obtain and keep in full force and effect, insurance of the types and in the minimum amounts stated below:

<u>Workers' Compensation</u>	Florida Statutory Coverage
<input checked="" type="checkbox"/> Employer's Liability (including appropriate Federal Acts)	\$100,000 Each Accident \$500,000 Disease Policy Limit \$100,000 Each Employee/Disease
<input checked="" type="checkbox"/> <u>Commercial General Liability</u> (including premises operations, and contractual liability)	\$2,000,000 General Aggregate \$1,000,000 Products/Comp. Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence

(The City of Jacksonville shall be named as additional insured under all of the above Commercial General Liability coverage and shall be endorsed with an agreement to notify the City at least thirty (30) days prior to any cancellation or change affecting coverage).

Any deviation from the above stated limits must be approved by the City's Risk Management Division. The Applicant must have host liquor liability or liquor liability and products liability coverage, either in a separate policy or under its Commercial General Liability coverage, if alcoholic beverages, foods, or other products are consumed, dispensed or vended by Applicant or Applicant's employees, invitees, licensees, contractors, assignees, contestants, exhibitors or performers. **Applicant shall provide the City's Special Events Coordinator with an original certificate of insurance and the endorsement form naming the City as an additional insured for approval 14 business days prior to the Event. Should liquor be sold on the Premises, a liquor license shall be provided to the City's Special Events Coordinator for approval 7 business days prior to the Event.** This license shall be prominently displayed in all beverage booths during the Event. Exception: _____

10. If default occurs on the part of the Applicant in fulfillment of any of the terms, covenants or conditions of this Agreement, the City may terminate this Agreement. In such case, the rent, taxes, fees, deposits and any other charges hereunder, whether accruing before or after such termination, shall be considered part of and inclusive of the City's damages resulting from Applicant's default. Applicant's default hereunder shall be considered a default of any and all agreements by and between Applicant and the City, and any amounts due Applicant under its other agreements with the City may be used by the City to remedy Applicant's defaults hereunder. Any remedy granted in this Agreement to City shall be in addition to all other remedies available to City in law or equity, and not exclusive of such remedies.
11. In the event that the Applicant cancels the Event, the City must receive written notice within 30 business days. All fees will be refunded in due course by City check. Should Applicant fail to cancel within the allotted time, Applicant forfeits its right to a refund.
12. In the event that the Premises or any part thereof, or adjacent premises required for access thereto, should be so damaged or destroyed by fire or other cause, without the fault of Applicant, as to prevent the use of the Premises for the Event, then this Agreement shall terminate. In such event, the City shall be paid for all items of expense incurred by it under this Agreement and any rental accrued prior to such destruction or damages, but Applicant shall be relieved of paying rent accruing thereafter. For purposes of this paragraph, causes or events not within Applicant's control shall include, without limitation, acts of God, floods, earthquakes, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Applicant's control, and thus not falling within this Section 11, shall include, without limitation, Applicant's financial inability to perform or comply with the terms and conditions hereof, economic hardship, a featured act's failure or refusal to perform or appear, and misfeasance, malfeasance or nonfeasance by any of Applicant's directors, officers, employees, contractors, or agents.
13. Applicant acknowledges Metropolitan Park's rules and regulations and agrees to same.

14. Applicant assumes all risks of damages to and loss by theft or otherwise of the furniture, appliances or other property of Applicant or Applicant's employees, invitees, licensees, contractors, assignees, performers, exhibitors, contestants and those otherwise contracting with Applicant, and Applicant hereby expressly releases and discharges City from any and all liability for any such loss and agrees to defend, indemnify and hold City harmless from all claims and actions for damages as to such losses, including attorney's fees.
15. City retains all television, film, recording and licensing rights as to any Event that takes place in the Premises.
16. Unless excused by impracticability or impossibility of performance or other lawful contractual defense, any attraction, act, or person contracted to appear during the Event as an entertainer shall appear at the published time or within one hour thereafter. Applicant shall not advertise or permit any advertising that a particular performer will appear for the Event until after a contract for the performer's appearance has been executed and a copy thereof has been provided to the City; otherwise, the City may terminate this Agreement and cancel the Event.
17. No exception or waiver of the sound provisions outlined in paragraph 3 shall be granted by the Chief of Special Events, Park Manager or Special Events Coordinator without prior authorization by ordinance adopted by City Council. No exception or waiver of any provision of this Agreement shall be effective unless in writing signed by the Chief of Special Events, Park Manager or Special Events Coordinator. No such waiver shall be held to waive the same provision on a subsequent occasion or be construed to constitute a waiver of any other provision of this Agreement. This Agreement contains the entire agreement between the parties, unless modified or amended by a subsequent written agreement executed by the parties. This Agreement shall be governed by the laws of the State of Florida, and venue for the resolution of disputes hereunder shall be in a court of law in Duval County, Florida.

[Remainder of page left blank intentionally. Signature page follows immediately].

IN WITNESS WHEREOF, the parties, by and through their authorized representatives' signatures below, do hereby execute this Agreement on this _____ day of _____, 2013.

APPLICANT:

CITY OF JACKSONVILLE:

By _____
Signature

By _____
Signature

Type/Print Name

Type/Print Name

Title

Title

G:\Gov't Operations\PJohnston\Metro Park\Met Park License Agmt 7-24-13 - Final.doc

