



## **AGENDA ITEM COVER PAGE**

**File ID: #6097**

### **Resolution**

**Sponsored by: Commissioner Keon Hardemon**

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO PRESENT AN OFFER TO EVENT ENTERTAINMENT GROUP, LLC, IN THE FORM OF A REVOCABLE LICENSE AGREEMENT ("LICENSE"), FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE SUCH LICENSE, SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY, AS TO LEGAL FORM AND CORRECTNESS.



**City of Miami**  
**Legislation**  
**Resolution**

City Hall  
3500 Pan American Drive  
Miami, FL 33133  
www.miamigov.com

**File Number: 6097**

**Final Action Date:**

A RESOLUTION OF THE MIAMI CITY COMMISSION AUTHORIZING THE CITY MANAGER TO PRESENT AN OFFER TO EVENT ENTERTAINMENT GROUP, LLC, IN THE FORM OF A REVOCABLE LICENSE AGREEMENT ("LICENSE"), FOR THE PRESENTATION OF THE ULTRA MUSIC FESTIVAL AT BAYFRONT PARK; FURTHER AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE SUCH LICENSE, SUBJECT TO REVIEW AND APPROVAL BY THE CITY ATTORNEY, AS TO LEGAL FORM AND CORRECTNESS.

WHEREAS, the City of Miami ("City") is the owner and the Bayfront Park Management Trust is the manager and operator of the real property known as Bayfront Park located at 301 Biscayne Boulevard, Miami, Florida ("Property"); and

WHEREAS, Event Entertainment Group, Inc., a Florida Corporation ("Licensee"), is the producer of the world's premier electronic music festival known as the Ultra Music Festival ("Event"); and

WHEREAS, as to the Event's worldwide status, in 2018, 36 events were produced on 6 continents, with over 300 million viewers having viewed live stream and 40 million listeners having tuned in to UMF Radio globally; and

WHEREAS, for over 20 years, the Event has been produced in the greater Miami area, of which 19 have been produced in the City; and

WHEREAS, the Licensee has previously staged the Event at the Property between 2013 and 2018, during which time the Licensee expended substantial resources toward the direct promotion and marketing of the City; and

WHEREAS, since 2012, the Event has generated approximately \$995 million of economic impact, generating \$168 million and creating 1,834 jobs in 2018 alone; and

WHEREAS, the 2019 Event was attended by patrons representing more than 105 countries and was live streamed to over 30 million viewers worldwide; and

WHEREAS, today, the Event remains a Miami-based production and the Event is the flagship event for all worldwide operations; and

WHEREAS, on November 15, 2018, by Resolution No. 18-0523, the City Commission authorized the City Manager to enter into a separate revocable license agreement with the Licensee for the production of the Event at Virginia Key; and

WHEREAS, the Licensee exercised its option to terminate the revocable license agreement at Virginia Key; and

WHEREAS, the City wishes to offer to the Licensee to have the Event return to the Property ("Proposal"); and

WHEREAS, the Proposal is provided in the form of the attached Revocable License Agreement ("License"); and

WHEREAS, the License is not assignable, is not for a fixed term, and is revocable at-will, for convenience, and without consent of the Licensee; and

WHEREAS, the License does not transfer any interest in real property, including any leasehold interest in real property owned by the City; and

WHEREAS, the License permits only certain enumerated, specific, and listed permitted uses on specified dates and does not permit anything further; and

WHEREAS, formal action and approval by the City Commission is required to authorize the City Manager to extend the Proposal and to execute the License and such authorization is a condition precedent to the License's legal efficacy and validity;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

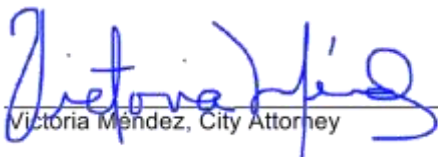
Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as fully set forth in this Section.

Section 2. The City Manager is authorized<sup>(1)</sup> to present an offer to the Licensee and subsequently negotiate and execute the License, in a form acceptable to the City Attorney, between the City and the Licensee for the purpose of producing the Event on the Property with the terms and conditions more particularly described in the License.

Section 4. The City Manager is authorized<sup>1</sup> to make non-substantive amendments to such License as needed, subject to the City Attorney's approval as to legal form and correctness.

Section 5. This Resolution shall become effective immediately upon adoption and signature of the mayor.<sup>2</sup>

APPROVED AS TO FORM AND CORRECTNESS:

  
Victoria Mendez, City Attorney 6/18/2019

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<sup>1</sup> The herein authorization is further subject to compliance with all requirements that may be imposed by the City Attorney, including but not limited to those prescribed by applicable City Charter and Code provisions

<sup>2</sup> If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission

## REVOCABLE LICENSE AGREEMENT

**THIS REVOCABLE LICENSE AGREEMENT** hereinafter referred to as this "Agreement," made this \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and between the CITY OF MIAMI, a municipal corporation, with offices at 3500 Pan American Drive, Miami, Florida 33133, hereinafter referred to as the "City," and EVENT ENTERTAINMENT GROUP, INC., a Florida for-profit corporation, with offices located at 201 S. Biscayne Blvd., Suite 800, Miami, Florida 33131, hereinafter referred to as "Licensee" (collectively, the "Parties").

### RECITALS

**WHEREAS**, the City is the owner of certain real property throughout Downtown Miami, including but not limited to 301 Biscayne Boulevard, Miami, FL 33132;

**WHEREAS**, the Bayfront Park Management Trust is a limited agency and instrumentality of the City with responsibility to oversee and manage Bayfront Park, located at 301 Biscayne Boulevard, Miami, FL 33132, subject to City Commission approval;

**WHEREAS**, Licensee hosts an annual electronic music festival ("Ultra Music Festival") and has previously staged the Ultra Music Festival at the Property during the period between 2013 and 2018, and during which time, Licensee expended substantial resources toward the direct promotion and marketing of the City of Miami;

**WHEREAS**, Licensor desires to have Licensee stage the Ultra Music Festival at the Property (as defined in Section 2.13) commencing in 2020 and Licensee is desirous of foregoing certain business opportunities in exchange for the benefits expressed in the Agreement;

**WHEREAS**, formal action by the City of Miami City Commission is required to authorize and accept this Agreement, and is a condition precedent to this Agreement's legal efficacy and validity; and

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the receipt and sufficiency of which is acknowledged by the parties, the City hereby grants unto Licensee the privilege of entry upon and use of the Property, for the production of the Event and for uses incidental thereto, on the terms and conditions set forth in this Agreement.

1. **RECITALS:**

The above Recitals are true and correct and hereby incorporated into and made a part of this Agreement.

2. **DEFINITIONS:**

When used in this Agreement, the following terms shall have the specified meanings:

2.1 **ADDITIONAL CHARGES** have the meaning given to such term in Section 7.4 and as outlined in Exhibit C, attached and incorporated hereto.

2.2 **AGREEMENT** has the meaning given to such term in the preamble to this Agreement.

2.3 **AMPHITHEATER** means the Klipsch Amphitheater.

2.4 **CITY** means the City of Miami.

2.5 **CITY COMMISSION** is the local legislative body of the City of Miami who has ultimate control

of the PROPERTY and the events held therein.

- 2.6 **EFFECTIVE DATE** has the meaning given to it in Section 3.3.
- 2.7 **EVENT** means the Ultra Music Festival, to take place annually at the Property on the Friday through Sunday on any weekend of March during the Term as described herein with operating hours of 4:00 p.m. on Friday to 12:00 a.m. on Saturday; 12:00 p.m. on Saturday to 12:00 a.m. on Sunday; and 12:00 p.m. on Sunday to 11:00 p.m. on Sunday. The hours described herein are firm unless an amendment thereto is mutually agreed upon by the Parties.
- 2.8 **INDEMNITEES** mean the City, the Bayfront Park Management Trust, and all the City's and the Bayfront Park Management Trust's respective members, officials, officers, agents, assigns, successors, personnel, and employees.
- 2.9 **LIABILITIES** means all losses, costs, penalties, fines, damages, claims, expenses (including attorney's fees, interest, and costs), and liabilities.
- 2.10 **LICENSEE** has the meaning given to such term in the preamble to this Agreement.
- 2.11 **PERMITTED USES** has the meaning given to it in Section 3.1.
- 2.12 **PREMISES** means the entire Property, as defined in Section 2.11 and depicted in Exhibits A, , and such open spaces that may be required by the Licensee for the Event, and other such facilities of the Property as may be authorized by the City.
- 2.13 **PROPERTY** collectively refers to the event space, and specifically includes the Amphitheater, located generally at 301 Biscayne Boulevard, Miami, FL 33132, as shown on the attached Exhibit A.
- 2.14 **TICKET SURCHARGE** means the fees to be paid in accordance with the ticket surcharge rates expressly provided in Section 53-1 of the Code of the City of Miami, Florida, as amended.
- 2.15 **USE FEE** means the sum of Two Million Dollars (\$2,000,000.00), that the Licensee shall pay the City for each yearly Event produced at the Property and Premises. The Use Fee shall be increased annually by three percent (3%) commencing upon the production of the third (3rd) Event and such Use Fee includes the Ticket Surcharge. Such Use Fee is more particularly described in Section 7 herein.
- 2.16 **USE PERIOD** means the Thirty (30) day period inclusive of load in and load out and ancillary preparations and removals. In no event will the entire Property be closed to the public for more than fourteen (14) days. These dates are subject to mutual agreement of the parties on an annual basis, as more particularly set forth in Section 3.2.

### 3. **EVENT AND USE PERIOD:**

#### 3.1 **Purpose:**

The Property shall be used and occupied by the Licensee solely for the purposes of producing the Event and for undertaking any and all uses ancillary and incidental thereto, selling, using or displaying any goods and/or products related to the Event, and to grant to third parties the right to sell, use or display any goods or products on, to, or from the Property (collectively the "Permitted

Uses"). Licensee may request written consent from the City Manager or their designee to use the Property for other allowed uses but shall not be authorized until Licensee has received the written consent of the City Manager or their designee, which consent may not be unreasonably conditioned, withheld or delayed. Unless otherwise expressly and specifically provided hereunder, Licensee shall be solely responsible for the production, coordination and management of the Event, at its sole cost and expense.

This Agreement solely authorizes Licensee to the temporary use of the Property for the limited purposes set forth herein and for no other purpose. The Parties hereby agree that, the provisions of this Agreement do not constitute a lease or confer any leasehold rights or estate. The rights of Licensee hereunder are not those of a tenant, but merely authorization to do certain acts of a temporary character on the Property and to use the Property, subject to the terms of this Agreement. The City retains dominion, possession and control of the Property. Licensee does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Property by virtue of this Agreement, its use of the Property, or by virtue of any expenditure of funds by the Licensee for improvements, construction, repairs, partitions, or alterations to the Property which may be authorized by the City Manager or his/her designee.

**3.2 Event Use Period:**

The Event will, at the option of Licensee, take place annually at the Property on the Friday through Sunday on any weekend of March, or other date mutually agreed upon by the Licensee and City Manager, for each Event year. The specific weekend for the Event shall be designated by Licensee and City in conjunction with the notice Licensee is required to deliver to the City pursuant to Section 9.4 described herein. The operating hours for the Event days shall be: from 4:00 p.m. on Friday to 12:00 a.m. on Saturday; 12:00 p.m. on Saturday to 12:00 a.m. on Sunday; and 2:00 p.m. on Sunday to 11:00 p.m. on Sunday. The aforementioned times shall be fixed and apply to the Event throughout the Term of this Agreement. Licensee will occupy the Property for no more than thirty (30) days including load in to load out. Set-up for the Event will begin at the commencement of the Use Period and tear-down will terminate no later than the end of the Use Period each year. In no event will the entire Property be closed to the public for more than fourteen (14) days. Any use of the word "day" or "days" throughout this Agreement shall mean calendar days, unless specifically stated otherwise.

**3.3 Term:**

There is no stated or expressed term for this Agreement. As a revocable license, it has an indefinite term and may be terminated or revoked for convenience at the will of the City Manager and as otherwise provided in this Agreement. The Effective Date of this Agreement is the execution date of the Agreement by the last of the Parties and shall continue until terminated by any means available in this Agreement. Licensee acknowledges that this is a revocable license agreement authorizing a specific use for a limited time per year, subject to various other limitations specified herein; and that it does not convey, pledge, hypothecate, or confer any right, title or interest in any City-owned real property.

**3.4 Termination**

**3.4.1 With Cause:** Each party agrees to abide by every term and condition of this Agreement. If either party materially breaches the terms, restrictions or conditions of this Agreement, then the nonbreaching party shall give the breaching party twenty (20) days written notice within which to cease such violation or correct such deficiencies. Upon the breaching party's failure to do so, the nonbreaching party may cancel this Agreement upon giving ten (10) days written notice to the breaching party and thereafter the Agreement shall be automatically canceled without the necessity for further action by the nonbreaching party.



Termination for cause shall include, without limitation, any one of the following acts or omissions: (a) Failure to pay any payment or any portion thereof within ten (10) days of due date; (b) Failure to carry insurance as required in this Agreement; or (c) Failure to comply with any material terms or conditions of this Agreement, including, but not limited to, conditions expressly set forth in Sections 5, 6 and 13.

**3.4.2 Without Cause:** Licensee or City may, at their respective option and without the other party's consent, terminate this Agreement upon at least three hundred and five (305) days' notice prior to the next subsequent Event. Should the City elect to terminate without cause, such termination shall require unanimous approval of the Commission (i.e., five of the five Commissioners must vote in favor of termination). If the Commission approves termination with anything less than unanimous approval, such termination shall not be effective.

**3.5 Reasonable Efforts:**

For purposes of this Agreement, the Parties shall use commercially reasonable efforts to assist and facilitate future productions of the Event to take place on the Property.

**4. PREMISES:**

**4.1 Amphitheater:**

Licensee shall not be required to pay any additional amount to the City or any other party for the use of the Amphitheater. The City shall cause the Amphitheater to be available to Licensee during the Use Period as described below, at no additional cost to Licensee beyond the Use Fee described in Section 7.1. The Use Period for the Amphitheater for each calendar year shall be determined by Licensee giving the City written notice by July 1 of each calendar year during the term, of the 15 consecutive days during the following March during which Licensee will utilize as its Use Period for the Amphitheater for the following calendar year. The election of the dates for the Use Period for the Amphitheater shall be made at the same time Licensee notifies the City of Licensee's intention to use the Property in the following year. If Licensee requests such dates after July 1, the City shall confirm or deny such desired dates within ten days of the City's receipt of Licensee's notice.

**4.2 Restroom Facilities:**

Licensee hereby agrees to provide adequate portable restroom facilities, which shall be open and operational during the Use Period.

**4.3 Control of Access:**

Licensee hereby agrees that the staff and management of the City, in consultation with the Miami Police Department and Licensee, have complete control as to when gates to Events are opened. Licensee hereby agrees to respond to any reasonable City request during the Use Period of the Event.

**4.4 Sound Checks:**

Licensee hereby agrees that there will be no sound checks before the Tuesday of the Event week. Sound checks may occur only on the following dates and times: (1) Tuesday of the Event week between the hours of 5:00 p.m. and 9:00 p.m. (2) Wednesday of the Event week between the hours of 5:00 p.m. and 9:00 p.m.; (3) Thursday of the Event week between the hours of 5:00 p.m. and 9:00 p.m.; and (4) Friday being the first event day from 3:00 to 4:00 p.m. Soundchecks will be conducted not to exceed a maximum level of 110 decibels measured 60 feet away from each stage.

**4.5 Light Checks:**

Licensee hereby agrees that there will be no light checks before the Tuesday of the Event week. Light checks may occur only on the following dates and times: (1) Tuesday of the Event week between the hours of 5:00 p.m. and 12:00 a.m.; (2) Wednesday of the Event week between the hours of 5:00 p.m. and 12:00 a.m.; (3) Thursday, Friday, Saturday and Sunday of the Event week with no time limitation except that on the Sunday of the Event, light checks shall end at 11:00 p.m.

**4.6 Sound Level:**

Licensee's Event may not exceed a maximum level of One Hundred Ten (110) decibels measured 60 feet away from each stage. Failure to cure each incident of sound level non-compliance within five (5) minutes of notification by a City designee will result in a fee of \$1,000.00 per each incident. Each incident shall constitute a separate event of non-compliance.

**4.7 Time of Event:**

Licensee hereby agrees the Event must end by 12:00 a.m. on Friday and Saturday of the Event, and 11:00 p.m. on the Sunday of the Event. Licensee shall pay a time overage fee of \$1,000.00 for every single minute, or a fraction thereof, if the Event continues beyond 12:00 a.m. This overage fee is in addition to all other fees and costs for which Licensee is responsible under this Agreement. Each minute shall constitute a separate event of non-compliance

**4.8 Alcohol Wrist Band Policy:**

Licensee hereby agrees that if alcoholic beverages are vended at the Event, Licensee will use alcohol wrist-banding staff to ensure consumers of alcohol are of the appropriate legal drinking age. Licensee or Licensee's concessionaire shall obtain all required permits required by law. Failure to comply with this rule, whether by the concessionaire or their representative, may result in the immediate cancellation of alcohol sales and breach of this Agreement, as determined by the City Manager or City Manager's designee.

**4.9 Dispensing of Alcoholic and Non-alcoholic Beverages:**

4.9.1 Licensee shall not sell beverages, alcoholic or non-alcoholic, in glass or polystyrene foam containers of any size.

4.9.2 Licensee hereby agrees to dispense a maximum of two (2) alcoholic beverages per person at time of purchase.

4.9.3 Licensee hereby agrees that sales of alcoholic beverages will stop sixty (60) minutes prior to the end of the Event. Sales of non-alcoholic beverages shall not be subject to this restriction.

4.9.4 Licensee is responsible to secure all governmental permits and approvals required by applicable laws and regulations for the sale and dispensation of alcoholic beverages. All required liquor permits shall be filed with the City Manager at least ten (10) days before the commencement of the Event.

**4.10 Sponsor's Signage and Banner Placement:**

City hereby agrees that Licensee may place signage and banners in the Property during the Use Period subject to the approval of the City's Director of Real Estate and Asset Management and such approval may not be unreasonably withheld, delayed or conditioned. Licensee shall ensure that all signage and banners are permitted and comply with City and County Sign and Zoning Regulations. Licensee shall secure all required permits and approvals for such signage and banners



and shall remove all signage and banners prior to the end of the Use Period.

**4.11 Non-Exclusivity:**

This Agreement confers no exclusive possession of the Property, provided however, the City agrees not to enter into another License or Use Agreement on this Property that would interfere with Licensee's ability to operate for the Permitted Uses on the Property according to the terms of this Agreement. The City agrees not to use or permit others to use the Property under the control of the City during the Use Period except as mutually agreed by the City and Licensee. Licensee recognizes and agrees that the Property is a public site and during the entirety of the Use Period, the Licensee will cooperate with the City to maximize public access to the Property. This will not be construed to prevent the Licensee from restricting access to the Event.

**4.12 Improvements:**

Licensee shall not make any permanent improvements or erect any permanent structures whatsoever to or on the Property without the prior written approval of the City, which may be refused or conditioned in the City's sole discretion. As of the Effective Date and throughout the Use Period, all buildings and permanent improvements thereon are vested in the City. Furthermore, title to permanent improvements and all alterations made in or to the Property, whether or not by or at the expense of Licensee, shall, unless otherwise provided by written agreement, immediately upon their completion, become the property of the City and shall remain with the Property. Licensee shall leave the Premises in a condition equal to or better than provided prior to each Event, as further detailed in Section 5 below.

**4.13 Traffic Management Plan:**

One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and submit to the City Manager for City's review and written approval, a maintenance of traffic plan setting forth the operational strategies for managing event-generated and background traffic on the day(s) of the Event within the Property and general region to ensure safe means of access to the site and to minimize traffic disruptions on Biscayne Boulevard. The City shall not unreasonably delay, condition and/or deny such approval.

**4.14 Safety and Security Plan:**

One Hundred and Twenty (120) days prior to each Event, Licensee shall prepare and make available to the City Manager for City's review and written approval, a Safety and Security Plan setting forth the various efforts to be undertaken by Licensee to ensure the safety and security of the patrons of the Event. The City shall not unreasonably delay, condition and/or deny such approval. The Safety and Security Plan shall include, without limitation: (1) a mass evacuation plan, (2) stage locations, (3) fencing locations, (4) security and emergency operations personnel requirements, (5) emergency vehicle access routes, (6) communications plan, and (7) any other necessary safety and security components required by the City's Police and Fire departments. Licensee shall also engage a security consultant for each Event and such consultant shall engaged for no more than twenty-five thousand dollars (\$25,000) for each Event.

**5. CONDITION OF PREMISES AND REQUIRED RENOVATIONS:**

5.1 Licensee has inspected, or has been given the opportunity to inspect, the Premises, prior to execution of this Agreement, and accepts it in its present condition and agrees to restore and return the same in the pre-load-in condition. The City shall maintain the Property on a year-round basis and shall be responsible for replacing and restoring elements on the Property which are damaged (unrelated to Licensee's use). Specifically, Licensee agrees that it shall replace or restore to their original condition, any and all components of the Property, including but not limited to

infrastructure, electrical or fiber-optic cables/lines, grass or trees, including necessary irrigation, if any, and decorative and play structures, which are damaged due to the Event. All replacement or restoration shall be in a manner satisfactory to the City, in the City's sole discretion.

- 5.2 Licensee shall repair and make the Property available for public use immediately after the Use Period and no later than June 1 following each Event, annually. Licensee understands that if the Property is not cleared of any and all production equipment, including electronics, supplies, and personal property by the expiration of the Use Period following notification to Licensee and, unless it has made other written arrangements with the City Manager or designee, a \$10,000.00 per day fee may be imposed until the Premises has been cleared
- 5.3 Licensee shall have the option to either elect to (i) pay the cost of re-installing damaged sod based on the square footage of sod requiring replacement or (ii) undertake to re-install the damaged sod. Licensee shall also have the option to either elect to (i) pay the costs and expenses of mulch removal based on the square footage of mulch required or (ii) undertake to directly remove mulch.
- 5.4 The Parties acknowledge that Licensee upon occasion shall have the right, but not the obligation, to make certain temporary renovations to the Property in order to produce the Event, with such temporary renovations occurring at Licensee's sole cost and expense. The City shall not have any obligation to Licensee, financial, contractual or otherwise, arising out of temporary renovations. Any temporary renovations shall be performed in a manner acceptable to the City and shall minimize impacts to visitors of the Property.
- 5.5 Licensee will use reasonable efforts to maintain the Property and surrounding areas clean from any waste during the Use Period.

## 6. COMPLIANCE WITH PERMITS AND LAWS:

- 6.1 Licensee represents and warrants that during the term of this Agreement, in connection with the Event, it will obtain and maintain all required permits and approvals. The City will assist Licensee in obtaining permit(s) from governmental agencies including the Police and Fire Departments of the City of Miami. Police Department and Fire Department manpower requirements shall be determined by the respective Department and presented to Licensee at least ten (10) business days prior to the Event.
- 6.2 Licensee represents and warrants that during the term of this Agreement, it will not use or employ the Premises, or any other City owned property, to handle, transport, store or dispose of any hazardous materials and that it will not conduct any activity on the Premises or other City-owned property in violation of any applicable environmental laws.
- 6.3 Licensee represents and covenants that it will comply, and require its concessionaires to comply, with all applicable laws, codes and ordinances, including, but not limited to, the Americans with Disabilities Act ("ADA"), the Florida Building Code, all laws prohibiting discrimination, planning, zoning, traffic, environmental laws, and regulations.
- 6.4 Licensee represents and warrants that it is aware of the restrictions contained in Sections 22-180 through 22-185 of the Code of the City of Miami entitled "Handbills" and that it will comply with all of the requirements therein with respect to the distribution of commercial handbills. Should Licensee fail to comply, it shall be responsible for the payment of any fine the City may impose upon the City. Payment for fines imposed must be made within ten (10) days of receipt thereof.

6.5 Licensee accepts this Agreement and hereby acknowledges that Licensee's strict compliance with all applicable federal, state and local laws, permits, approvals, ordinances, rules, and regulations (collectively sometimes referred to as: "law" or "laws") is a condition of this Agreement, and Licensee, and any of its employees, agents or performers, shall comply therewith as the same presently exist and as they may be amended hereafter. This Agreement shall be construed and enforced according to the laws of the State of Florida.

7. **USE FEE:**

7.1 The Use Fee that is hereby agreed to by Licensee, to be paid by Licensee to the City is Two Million Dollars (\$2,000,000.00) for each Event that occurs on the Property under the terms of this Agreement, subject to an increase of three percent (3%) annually commencing upon the production of the third (3rd) Event, such increase applying yearly to each Event thereafter through the termination of this Agreement.

7.2 The Use Fee includes the Ticket Surcharge as defined in Section 2 of this Agreement. The Use Fee is an unconditional and absolute payment due the City regardless of any ticket shortfalls, reductions in ticket sales, ticket price or sale fluctuations, or the number of tickets sold by the Licensee for the Event. The Use Fee is due as a net payment to the City without any deductions made for service charges, utilities, taxes, allowable offsets, Additional Charges as described herein, and any similar credits. The Ticket Surcharge as described herein and outlined in Section 53-1 of the Code of the City of Miami, as amended, shall be applicable to all Event tickets sold. In the event the Ticket Surcharge due to the City in accordance with Code Section 53-1 exceeds the Use Fee, the City shall be entitled to the greater of the Ticket Surcharge or the Use Fee. Notwithstanding any language to the contrary, under no circumstances will the City ever receive less than the Use Fee. For example, if the Ticket Surcharge in effect at any time would result in Ticket Surcharge collections of \$2,700,000 for an Event, and the Use Fee payable to the City under Section 7.1 for that Event is \$2,000,000, then Licensee would pay the City \$2,700,000 in full satisfaction of Licensee's obligations under both Sections 7.1 and 10.1.

7.3 In consideration of the use of the Property, Licensee shall be responsible for all costs and expenditures associated with the production of the Event, and Licensee shall compensate the City by payment of the Use Fee as defined in this Agreement. The Use Fee shall include fees for use of the Premises on load-in and load-out days and Event Days, the Ticket Surcharge and fees for use of the Property.

7.4 The Use Fee shall cover all fees associated with the use of the Property by Licensee. The Use Fee is for the temporary use of the Property, as specified in this Agreement, and does not include any services provided by the City, and specifically excludes Additional Charges, which may be incurred by Licensee, such as agreed-upon clean-up services, police, fire-rescue, sanitation, and other charges set forth in Exhibit C ("Additional Charges"). The final cost of any Additional Charges that are usual and customary for the Event shall be determined by the City and agreed upon by Licensee following a prior estimate by the City of the various service providers, as applicable. Any Additional Charges not estimated by the Parties, such as unanticipated necessary overtime expenses, shall be finalized and agreed-upon in good faith by the Parties and paid in the manner contemplated by Section 8.2 below.

7.5 Under no circumstances will the City be liable for any costs or expenses incurred by Licensee under this Agreement or as a result of its operations or related activities beyond those that are expressly and specifically set forth in this Agreement. Licensee shall be responsible for all costs involved in the production of the Event, including without limitation: all BMI and ASCAP copyright and

license fees, any intellectual property fees, all staffing and all charges for police, fire rescue, inspectors, building and/or assembly permits, security, insurance, all utilities, supplies, equipment rental, ticket surcharge, all applicable taxes, including State of Florida Sales and Use Tax, any other governmental levies and impositions imposed by law, and other services. Licensee may engage any vendor(s) it elects to contract with, and Licensee is not required to use City-approved vendors, except as otherwise specifically provided by law or in this Agreement. The preceding sentence does not apply to service furnished by City employees.

- 7.6 With respect to Licensee's payment obligations relating to the Additional Charges as set forth on Exhibit C, Licensee shall receive a credit for all Additional Charges pertaining to police and fire, for an amount not to exceed One Million Dollars (\$1,000,000) per each year of the Term (collectively, the "In-Kind Cap"). Such In-Kind Cap shall be credited immediately prior to payment of the Use Fee by Licensee to the City. The In-Kind Cap shall be used to pay for the Additional Charges pertaining to those services provided by the City's Police and Fire departments. No services that would normally be provided by the City, no administrative expenses of the City and no equipment costs shall be considered in computing the In-Kind Cap.
- 7.7 Notwithstanding any language in this Agreement to the contrary, Licensee and City shall use good faith diligent efforts to resolve the outstanding Additional Charges owed to the City by Licensee from the 2019 Event held at Virginia Key (the "Outstanding Fees"). Should the Parties fail to reach a mutually agreed resolution of the Outstanding Fees or if Licensee fail to pay agreed-upon fees, on or before July 15, 2019, the same shall be considered a material breach and default by Licensee.
- 7.8 The City reserves the right to interrupt, curtail or suspend the provision of any utility service, including but not limited to, heating, ventilating and air conditioning systems and equipment serving the Property, to which Licensee may be entitled hereunder, when necessary by reason of accident or emergency, or for repairs, alterations or improvements in the judgment of the City Manager desirable or necessary to be made or due to difficulty in obtaining supplies or labor, or for any other cause beyond the reasonable control of the City. The work of such repairs, alterations or improvements shall be prosecuted with reasonable diligence, and to the extent that substantial repairs, alterations, improvements and/or construction is contemplated or scheduled to occur during the Use Period, Licensee shall be promptly notified by the City of such scheduled repairs, alterations, improvements and/or construction. The City shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Licensee or for any limitation of supply resulting from governmental orders or directives. Licensee shall not claim any damages by reason of the City's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Licensee's obligations hereunder be affected or reduced thereby.

**8. TERMS OF PAYMENT:**

- 8.1 Licensee shall submit to the City, by wire transfer, cashier's check, or money order, and in any event no later than 5:00 p.m., two (2) days prior to the commencement of the Event, the Use Fee, and any estimated additional charges, and Licensee shall have fully and timely replenished the Damage & Security Deposit by the dates outlined herein.
- 8.2 All amounts due to the City in excess of the Use Fee or in excess of the estimated Additional Charges, including all pass-through costs, shall be remitted to the City the later of (i) thirty (30) days following the conclusion of the Event or (ii) ten (10) days after Licensee's receipt of such invoice(s).

8.3 If any installment of the Use Fee or any other undisputed sum due from Licensee shall not be received by the City on the date such undisputed sum is due, Licensee shall pay to the City an interest rate equal to five percent (5%) per annum of such overdue amount. If the undisputed sum due is not received by the City within fifteen (15) days after the date on which such undisputed sum is due, the Five percent (5%) interest rate will be replaced with an interest rate equal to Eleven and One Half (11.5%) per annum of such overdue amount. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs the City will incur by reason of late payment by Licensee. Acceptance of such late charge by the City shall not constitute a waiver of the Licensee's default with respect to such overdue amount, nor prevent the City from exercising any of its other rights and remedies granted hereunder or at law or in equity. The terms of this Section shall not apply to any charges which are the subject of a good faith dispute which are controverted in writing, setting forth with reasonable specificity all pertinent details by the party seeking to avoid payment, within ten (10) days of the due date.

9. **DAMAGE & SECURITY DEPOSIT; DATE DESIGNATIONS:**

9.1 The Damage & Security Deposit shall be in the amount of Two Hundred and Fifty Thousand dollars (\$250,000.00) and shall be subject to the applicable terms of this Agreement. The Damage & Security Deposit is intended to secure performance of all of Licensee's obligations hereunder, including but not limited to the repair and restoration of the Property after the Event. In addition, the Damage & Security Deposit is intended to secure Licensee's request for future dates through the end of the term of this Agreement. The Damage & Security Deposit shall be due immediately prior to the Use Period.

9.2 A joint inspection of the Premises by the parties will be made within Two (2) business days after the completion of each Event and/or upon the expiration of the Use Period, wherein the short-term and long-term repairs to the Property will be identified. The Damage & Security Deposit will be held by the City until such time as all the repairs are completed or it is depleted by Licensee's failure to complete the restoration within the allotted time. The Damage & Security Deposit shall also be applied toward payment of any fees, liens, costs or other assessments against the Property or the City for activities and operations of Licensee directly resulting from or related to the Event. In the event the amount necessary to repair the damages or satisfy Licensee's obligations hereunder exceeds the Damage & Security Deposit, then Licensee agrees to pay the balance to the City within Ten (10) business days of the City's written request.

9.3 Nothing in this Agreement shall be construed as constituting the consent or request of the City, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials, for any specific work on the Property nor as giving the Licensee the right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any liens against the City's interest in the Property. If any liens shall at any time be filed against the Property, the Licensee shall initiate steps to cause it to be discharged of record within thirty (30) days after the date that it has notice of its filing. Licensee's failure to comply with this Section shall be a material breach of this Agreement by Licensee for cause.

9.4 Licensee further agrees to inform the City by July 1 of every subsequent Event year, of the requested dates on which the Event shall be scheduled, or otherwise shall inform the City of its intentions not to produce the Event during the Use Period for the subsequent dates for the immediately following year. If Licensee does not affirm its intention of not holding the Event, the Damage & Security Deposit will be held to secure performance of all Licensee's obligations. Licensee's failure to inform the City of Licensee's intention to not hold the Event by the above-



stated deadlines, shall be deemed an affirmation by Licensee of its intention to continue to use the Property so long as the License is in effect. Cancellation of the Event after Licensee's affirmation to the City of its intention to use the Property shall result in forfeiture of the Damage & Security Deposit.

- 9.5 Similarly, in the event the Damage & Security Deposit falls below \$250,000.00 after Licensee completes all necessary repairs to the Property, Licensee shall timely and fully replenish up to the full amount of \$250,000.00 one (1) day prior to the following Event's Use Period.
- 9.6 If Licensee fails to remove any personal property, equipment and fixtures from the Property within Twenty-Four (24) days following the close of the Use Period and notification by the City to Licensee and following Licensee's failure to remove such personal property, equipment and fixtures from the Property, then said property shall be deemed abandoned and thereupon shall become the sole personal property of the City. The City, at its sole discretion and without liability shall remove the same and Licensee shall reimburse the City for all costs associated with such removal and disposal within Ten (10) business days following such removal. Licensee will be liable for any costs, including removal and/or storage, incurred by the City for Licensee's failure to timely remove personal property, equipment and fixtures from the Property.
- 9.7 Licensee shall not be entitled to receive any interest on the Damage & Security Deposit. As this Agreement is a license, the Parties stipulate that Chapter 83, Florida Statutes, does not apply to the Damage & Security Deposit, and this is not a lease agreement.

**10. TICKETS:**

**10.1 Ticket Surcharge:**

For purposes of this Agreement, the City acknowledges and agrees that all applicable ticket surcharges as stated in Section 53-1, of the Code of the City of Miami, as may be amended, that are due to the City are inclusive in the Use Fee, unless the total Ticket Surcharge due to the City under such Code Section 53-1 exceeds the Use Fee. Licensee shall pay to City all Ticket Surcharge fees to the extent that they exceed the Use Fee, as provided in Sections 7.1 and 7.2 herein. Licensee agrees to pay all applicable taxes, merchant, and service charges related to tickets.

**10.2 Complimentary Tickets:**

Subject to those terms set forth in Section 7, Licensee shall have the right to distribute complimentary tickets per each Event day for promotional use without payment of a ticket surcharge.

**10.3 Ticket Policy:**

**10.3.1** Licensee agrees that all ticketed events in the Property, including the Event will be audited by the City Manager's designee relating to tickets sold by Licensee. There will be no exceptions.

**10.3.2** Licensee agrees to submit a valid ticket manifest prior to the opening of the gates. There will be no exceptions. The City Manager's designee will report compliance or lack of compliance to the City prior to the gates being opened on the day of the Event.

**10.3.3** Failure to provide a valid ticket manifest may result in a non-compliance fee as outlined below. The fee will be assessed on all tickets counted by the City, including complimentary tickets. Fees shall be assessed as follows: 1,000 to 9,999 tickets - \$1,000.00 non-



compliance fee; 10,000 to 19,999 tickets - \$2,000.00 non-compliance fee; and 20,000 + tickets - \$3,000.00 non-compliance fee

**10.4 Ticket Scanning:**

In the event that Licensee employs a ticket scanning method (including barcode, RFID and other scanning technologies), City ticket scanning personnel will not tear tickets in half and a drop count will not be used. Additionally, Licensee shall provide sufficient back-up scanners in the event of any scanner malfunction. In the event of a complete scanner failure, the City may use alternative methods to maintain accurate counts of patrons attending the Event. Licensee will provide the City with a laptop loaded with a ticketing program that will track the scanned tickets making it possible to know how many patrons are in the facility at any time. In the event that the show's tickets are sold out, the City and Licensee agree that ticket counting staff will not be required.

**10.5 Capacity:**

The current minimum capacity for the Event is 55,000 persons. Licensee shall have the right to increase the capacity for the Event subject to the City's reasonable discretion. The City agrees to use its best efforts to cooperate with Licensee in the event that Licensee elects to increase the number of tickets that may be issued for, and the total attendance at, the Event.

**11. ADVERTISING:**

All advertising for Event must state (i) Miami, FL; Bayfront Park; (ii) Bayfront Park, 301 Biscayne Boulevard, Miami, FL 33132, or some other derivative specifically acknowledging the City of Miami and Bayfront Park. Licensee shall not permit any signs or advertising matter to be placed upon the exterior of the Property without having first obtained the written approval of the City Manager or their designee, which approval may not be unreasonably withheld, delayed or conditioned. Licensee shall, at its sole cost and expense, install, provide, maintain such sign, decoration, advertising matter or other things as may be permitted hereunder in good condition and repair at all times. Licensee must further obtain approval from all governmental authorities having jurisdiction and must comply with all applicable requirements set forth in the Sign Regulations in the City of Miami Code and Zoning Ordinance and the Miami-Dade County Sign Code, as applicable. Upon the end of each Use Period, Licensee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other item permitted hereunder from the Property. Licensee hereby understands and agrees that the City may, at its sole discretion, erect or place upon the Property an appropriate sign indicating City's having entered into this Agreement.

**12. FOOD & ARTS & MERCHANDISE LOCATIONS:**

Not later than sixty (60) days prior to the Use Period, the Licensee shall make available to the City, for the City Manager's approval, which approval shall not be unreasonably withheld, delayed or conditioned, a preliminary site plan setting forth the location of Licensee's installations and equipment on the Property, including, without restriction, the location of the Licensee's tents, ticket box office, concession and food stands, and vans. Final Site Plan shall be due to the City not later than thirty (30) days prior to the Use Period. The City Manager, or his designee, shall approve or disapprove, which disapproval shall state the reasons within five (5) business days after its receipt. The City and the City's Fire Department reserve the right to remove or revise the location of booths for the Event to the extent necessary for public health, safety and security during the Event.

**13. SECURITY:**

Licensee shall provide, at Licensee's cost, all necessary perimeter/t-shirt event security and police officers to be determined by the City of Miami Police Department and the City, including, but not limited to, an on-

site special response team on site throughout the duration of the Event. In addition, the City may require extra fencing or security if it deems it necessary. The Licensee shall maintain access for City of Miami emergency vehicles on the Property at all times.

**14. INSURANCE:**

Licensee shall obtain and maintain in force for the Use Period, insurance policies and coverages, as may be reasonably amended from time to time by the City's Director of Risk Management or designee using commercially reasonable standards, and as set forth on Exhibits B-1 and B-2 (B-1 is for the Licensee; B-2 is for the caterer), which is attached hereto and made a part of this Agreement. The City and the Bayfront Park Management Trust shall be named "Additional Insured" on all policies. Any questions regarding insurance should be directed to the City. Licensee shall furnish all required insurance certificates no later than ten (10) days prior to the commencement of the Use Period.

**15. INDEMNIFICATION:**

Licensee agrees to indemnify, defend (at its own cost and expense), covenant not to sue, and hold harmless the City, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors, and the Bayfront Park Management Trust, their respective officers, officials, employees, personnel, volunteers, agents, assigns, representatives, and successors and the U.S. Army Corps of Engineers (hereinafter collectively referred to as the "Indemnitees") from and against all Liabilities to the extent arising out of, resulting from, or in connection with (i) the Event, the use of the Premises and/or performance of any renovation to the Premises, (ii) the performance or non-performance of this Agreement, whether it is, or is alleged to be, directly or indirectly caused, in whole or in part, by any act, omission, default or negligence (whether active or passive) of the Indemnitees, or any of them (except for the intentional, criminal or wrongful acts, or gross negligence or willful misconduct committed by such Indemnitees), (iii) the use of any products sold, advertised, provided, or otherwise distributed by Licensee to users, invitees, guests, employees, agents, the general public, or any other individual or (iv) the failure of Licensee to comply with any of the provisions contained herein, or to conform to statutes, ordinances, or other rules, conditions of approval, permits or regulations or requirements of any governmental authority, local, federal or state, in connection with the performance of this Agreement, including, without limitation all actions and omissions by the Licensee taken as a result of or in connection with this Agreement. This Indemnification shall cover liabilities in tort, liabilities in contract, liabilities alleging statutory or regulatory violations including, but not limited to claims resulting from noise, light, nuisance, traffic, and/or liabilities derived from any other actions or omissions alleged to impact the quiet enjoyment of residents, tenants, or commercial entities in the surrounding neighborhoods, or otherwise who reside within one (1) mile of the Property. Licensee expressly agrees that this indemnification shall include all employees/personnel of the City, on and off-duty police officers, fire, and other emergency/medical service employees/personnel rendering services or support in connection with the Event. In addition, Licensee expressly agrees to indemnify, covenant not to sue, and hold harmless the Indemnitees, or any of them, from and against all Liabilities which may be asserted by an employee or former employee of Licensee, or any of its contractors, subcontractors, agents, representatives, concessionaires, vendors, invitees, guests, or consultants as provided above, for which Licensee's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws. This Indemnification provision shall survive the expiration, termination, or cancellation of this Agreement and shall continue in effect until the expiration of the corresponding statute of limitations or the tolling thereof. The word Liabilities used in this Section includes claims and actions relative to the Liabilities. Granting of this Agreement is freely acknowledged by the Licensee as good and sufficient independent consideration for this Indemnification. To the extent that Licensee undertakes any indemnification obligations under this Section 16, and notwithstanding any provision herein to the contrary, Licensee shall have its choice of counsel for a defense and control resolution of the claim(s) provided the Indemnitees are not required to admit any liability or to make any payments. The City hereby consents to the common representation of the Indemnitees and Licensee by any competent and adequate legal counsel reasonably selected by Licensee in defense of the indemnified claims and agree to sign any other written consent

reasonably required by legal counsel in accordance with the rules of professional conduct or any other rules of ethics governing common representation by legal counsel. If, however, the interest of the respective parties diverges such that the parties may not be represented by one counsel, then Licensee shall retain separate counsel on behalf of the Indemnitees. The City and Licensee hereby waive any claim of conflict of interest (and shall confirm such waiver to the law firms selected by Licensee to undertake their common defense) arising from the defense of the indemnified claim in the manner set forth above.

**16. RISK OF LOSS:**

Except as set forth in the following sentence, the Indemnitees as described above, assume no responsibility whatsoever for any person or property that enters the Premises as a result of, or in connection with, the Event. In consideration of the execution of this Agreement by the City, Licensee releases the Indemnitees from any and all liability for any loss, injury, death, theft, damage or destruction to any persons or property to include, without limitation, those described above in Section 15 Indemnification, which may occur in or about the Premises and which loss, injury, theft, damage or destruction to any persons or property arises from Licensee's negligent acts or omissions. To the extent allowed by Florida Statute 768.28, Licensee does not release the City for any and all liability to the extent such liability is determined to be due to the intentional or willful misconduct or gross negligence of the City.

**17. DEFAULT PROVISION:**

In the event Licensee shall fail to comply with any material term and condition of this Agreement or shall fail to perform any of the material terms and conditions contained herein, then the City, at its sole option and in addition to all other rights and legal remedies available to it by law, upon written notice to Licensee, may cancel and terminate this Agreement [after providing Licensee with written notice of any material breach by Licensee and after allowing Licensee an opportunity of Twenty (20) days to cure such material breach or default] and all payments made by Licensee pursuant to this Agreement, shall be retained by the City. Licensee shall have no recourse against the City or Bayfront Park Management Trust from the provisions of this Section.

**18. AWARD OF AGREEMENT:**

Licensee represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon the award of this Agreement.

**19. PUBLIC RECORDS:**

Licensee understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable laws. Licensee's failure or refusal to comply with the provisions of this section shall result in the City's immediate cancelation of this Agreement. Licensee acknowledges that this termination is not subject to cure provisions contained elsewhere in this Agreement.

IF THE LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS BY PHONE AT 305-416-1883; BY EMAIL AT [PUBLICRECORDS@MIAMIGOV.COM](mailto:PUBLICRECORDS@MIAMIGOV.COM); OR IN PERSON AT 444 SW 2ND AVENUE, 9TH FLOOR, MIAMI, FLORIDA 33130.

**20. NON-DISCRIMINATION:**

Licensee shall not discriminate against any persons on account of race, color, sex, sexual orientation, gender, religion, creed, ancestry, national origin, age, disability, or marital status in the use of the Premises.

**21. AUTHORIZED PERSONNEL:**

The City shall have authorized representatives with decision making authority, reasonably available at all reasonable times throughout the Use Period for consultation with Licensee, as requested.

**22. AUTHORITY TO EXECUTE AGREEMENT:**

Each party represents to the other that it has the power to enter into this Agreement and that the consent of no other person or entity is required in connection therewith, except as otherwise provided, and this Agreement constitutes a valid and binding obligation of each party in accordance with the terms hereof. This Agreement is subject to the separate review and approval of the Miami City Commission as an express condition precedent to its validity.

**23. RELATIONSHIP OF PARTIES:**

This Agreement shall not be deemed or construed to create any landlord tenant relationship, leasehold estate, rights of exclusive occupancy and possession of the Property and Premises during the Use Period, or agency relationship, partnership, or joint venture between the City and Licensee. The City is not a guarantor of any debt, default or miscarriage of the Licensee.

The City enters into this Agreement with Licensee to provide Licensee with a limited use of the Property for the Event, and does so in a proprietary sense as landowner, not in its regulatory capacity. Any approvals herein shall not be considered approvals or waivers of any applicable laws, or otherwise relieve Licensee of any obligation it may have at law to submit applications with any department of the City or any other governmental authority having jurisdiction.

**24. NOTICES:**

Notices required under this Agreement shall be deemed to be given when hand-delivered (with receipt therefore) or mailed by registered or certified mail, postage prepaid, return receipt requested.

**AS TO LICENSEE:**

General Counsel  
Event Entertainment Group, Inc.  
201 S. Biscayne Blvd., #800  
Miami, Florida 33131

**AS TO THE CITY:**

City Manager  
City of Miami  
3500 Pan American Drive  
Miami, Florida 33133

**WITH A COPY TO:**

City Attorney  
City of Miami  
444 SW 2nd Avenue, Suite 945  
Miami, Florida 33130

**WITH A COPY TO:**

Director of Real Estate & Asset Management  
City of Miami  
444 SW 2nd Avenue, 3<sup>rd</sup> Floor  
Miami, Florida 33130

**25. GOVERNING LAW/VENUE; ATTORNEYS FEES:**

This Agreement shall be construed according to the laws of the State of Florida and venue for any and all claims or controversies that may arise as a result of this Agreement shall be heard in a court of competent jurisdiction in Miami-Dade County, Florida. Each party shall bear their own respective attorney's fees.

**26. CONFLICT OF INTEREST:**

Licensee is aware of the conflict of interest laws of the City of Miami (Code of the City of Miami, Florida, Chapter 2, Article V), of Miami-Dade County, Florida (Code of Miami-Dade County, Florida, Section 2-11.1) and of the State of Florida (as set forth in Florida Statutes) and agrees it will fully comply in all respects with the terms of said laws and any future amendments.

**27. FORCE MAJEURE:**

The Parties shall not be liable to the other and shall excuse the other from their respective obligations hereunder for any failure to perform their respective obligations where such failure is caused by Force Majeure, which is defined herein as any event whereby the Property, or any portion thereof, shall be destroyed or damaged, as a result of any event beyond human control, including but not limited to acts of national security, national emergency, acts of God, war, act or threats of terrorism, domestic government regulations, strikes (other than strikes of Licensee's employees), fire or other natural calamity, disorder, civil disobedience, curtailment of transportation facilities or service, or any occurrence which makes it illegal or impossible for Licensee to perform its obligations under this Agreement.

**28. ASSIGNMENT:**

The City has relied on the extensive and unique reputation and experience of Licensee in granting this License. The License is personal to the Licensee. Licensee shall not sell, grant, confer, or assign this License or any part thereof to any other party, person, or entity. The License granted by this License is personal to the Licensee. Any assignment of this License contrary to the foregoing provision, whether voluntary or involuntary, shall be void and shall confer no right upon such assignee, shall constitute a default under this License, and shall result in an automatic revocation of the License and the forfeiture of the rights of Licensee hereunder following notification to Licensee.

**29. SEVERABILITY**

It is the express intent of the Parties that this Agreement constitutes a license and not a lease. To further this intent, the Parties agree as follows: (i) if any provision of this Agreement, or the application thereof to any circumstance, suggest that a lease, rather than a license, has been created, then such provision shall be interpreted in the light most favorable to the creation of a license and (ii) if any provision of this Agreement, or the application thereof to any circumstance, is determined by a court of competent jurisdiction to have created a lease rather than a license, then such provision shall be stricken and, to the fullest extent possible, the remaining provisions of this Agreement shall not be affected thereby and shall continue to operate and remain in full force and effect.

With regard to those provisions which do not affect the Parties intent for this Agreement to serve as a license, should any provision, section, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Miami, such provision, section, paragraph, sentence, word or phrase shall be deemed modified to the minimum extent necessary to accomplish the intent of this Agreement to the maximum extent allowable without violating any applicable laws; or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.



**30. AMENDMENTS**

No alterations, amendments or modifications hereof shall be valid unless executed by an instrument in writing by the Parties with the same formality as this License. Neither this License, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by an instrument in writing, and no prior or subsequent oral agreement shall have any validity whatsoever. Notwithstanding any language to the contrary, the City Manager is authorized to administratively execute non-substantive or operational amendments, not involving material terms, to this License without the necessity of further action by the City Commission.

**31. CITY ACCESS**

The City and its authorized representative(s) shall at all times have access to the Property. The City will maintain a complete set of keys to the Property. Licensee, at its sole cost and expense, may duplicate or change key locks to the Property but not until first receiving written approval from the City Manager for such work. In the event Licensee changes key locks as approved by the City Manager, Licensee, at its sole cost and expense, must also provide to the City a copy or copies of said keys, if more than one copy is required.

The City shall have access to and entry into the Property at any time to: (a) inspect the Property; (b) to perform any obligations of Licensee hereunder which Licensee has failed to perform after written notice thereof to Licensee, Licensee not having cured such matter within ten (10) days of such notice, and without the City waiving any legal rights or remedies; (c) to assure Licensee's compliance with the terms and provisions of this Agreement and all applicable laws, ordinances, rules and regulations; (d) to show the Property to prospective purchasers, tenants or others; and (e) for other purposes as may be deemed necessary by the City Manager or his/her authorized designee in the furtherance of the City's corporate purpose. The City shall not be liable for any loss, cost or damage to the Licensee by reason of the exercise by the City of the right of entry described herein for the purposes listed above. The making of periodic inspections or the failure to do so shall not operate to impose upon the City any liability of any kind whatsoever nor relieve the Licensee of any responsibility, obligations or liability assumed under this Agreement.

**32. INDEPENDENT AUDITOR GENERAL-ACCESS TO DOCUMENTS**

The City of Miami has established the Office of the Independent Auditor General ("IAG"), to provide the City Commission with independent oversight of audit and analytical functions of the City. The IAG shall have the power to audit, and to make copies of or extracts from all records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to the Event and this Agreement but only to the extent necessary to ensure compliance with the terms expressly set forth in this Agreement. The IAG shall only have access to Licensee's records to the minimum extent required to ensure such compliance, and such records shall not include Licensee's internal financial and accounting records unrelated to the Event and this Agreement.

Any information deemed to be confidential, proprietary, or a trade secret under Florida law, but integral to completing audit procedures, will be timely made available for review but will be excluded from the audit work papers. Licensee shall, at all times during the term of this Agreement and for a period of five (5) years after the termination of this Agreement, maintain such records, together with such supporting or underlying documents and materials available in a location within Miami-Dade County, Florida as may be requested by the City. Nothing in this Section shall impair any independent right of the City of Miami, pursuant to applicable laws and regulations, to conduct audits or investigate its activities. The provisions of this Section



are neither intended nor shall they be construed to impose any liability on the City of Miami by the Licensee or third parties.

*(SIGNATURE PAGE FOLLOWS)*

IN WITNESS WHEREOF, the parties hereto have individually and through their proper corporate official executed this Agreement, this the day and year first written.

“CITY”

ATTEST:

CITY OF MIAMI, A Florida Municipal Corporation

\_\_\_\_\_  
**Todd B. Hannon**  
City Clerk

\_\_\_\_\_  
**Emilio T. Gonzalez, Ph.D.**  
City Manager

Approved as to Legal Form  
And Correctness by:

Approved as to Insurance  
Requirements by:

\_\_\_\_\_  
**Victoria Méndez,**  
City Attorney

\_\_\_\_\_  
**Ann-Marie Sharpe**  
Director of Risk Management

Approved as to Business Terms:

\_\_\_\_\_  
**Daniel Rotenberg**  
Director of Real Estate &  
Asset Management

“LICENSEE”

ATTEST:

EVENT ENTERTAINMENT GROUP, INC.

\_\_\_\_\_  
*Witness, sign above & print name below*

\_\_\_\_\_

\_\_\_\_\_  
*Witness, sign above & print name below*

\_\_\_\_\_

**EXHIBIT A**

**PROPERTY – BAYFRONT PARK**

**301 Biscayne Boulevard, Miami, FL 33132**

**EXHIBIT B**

**INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT ENTERTAINMENT GROUP, INC.**

**I. Commercial General Liability**

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability  
Premises and Operations Liability  
Primary Insurance Clause Endorsement  
Explosion, Collapse and Underground Hazards  
Terrorism Coverage Included  
Liquor Liability Included  
Waiver of Subrogation

**II. Business Automobile Liability**

A. Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

**III. Worker's Compensation**

Limits of Liability  
Statutory-State of Florida  
Waiver of subrogation

Employer's Liability

- A. Limits of Liability
  - \$1,000,000 for bodily injury caused by an accident, each accident.
  - \$1,000,000 for bodily injury caused by disease, each employee
  - \$1,000,000 for bodily injury caused by disease, policy limit

**V. Umbrella Policy/Excess Liability**

- A. Limits of Liability
  - Bodily Injury and Property Damage Liability
  - Each Occurrence \$ 10,000,000
  - Aggregate \$ 10,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including terrorism and liquor liability.

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

**EXHIBIT B-2**

**INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE-EVENT ENTERTAINMENT GROUP, INC. (CATERING COMPANY)**

**I. Commercial General Liability**

A. Limits of Liability	
Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Damage to Rented Premises	\$50,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Contingent and Contractual Liability  
Premises and Operations Liability  
Primary Insurance Clause Endorsement  
Explosion, Collapse and Underground Hazards  
Terrorism Coverage Included  
Waiver of Subrogation

**II. Business Automobile Liability**

A. Limits of Liability	
Bodily Injury and Property Damage Liability Combined Single Limit	
Any Auto, Owned Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

B. Endorsements Required

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured



**III. Worker's Compensation**

Limits of Liability  
Statutory-State of Florida  
Waiver of subrogation

Employer's Liability

Limits of Liability  
\$1,000,000 for bodily injury caused by an accident, each accident.  
\$1,000,000 for bodily injury caused by disease, each employee  
\$1,000,000 for bodily injury caused by disease, policy limit

**IV. Umbrella Policy/Excess Liability**

Limits of Liability  
Bodily Injury and Property Damage Liability  
Each Occurrence \$10,000,000  
Aggregate \$10,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

Coverage is excess over all applicable liability policies contained herein including liquor liability.

**V. Liquor Liability**

Limits of Liability  
Each Occurrence \$1,000,000  
Aggregate \$1,000,000

City of Miami, Bayfront Park Management Trust, and each of the respective instrumentalities, Members, Partners, Affiliates, each of their respective Officers, Directors, Shareholders, Employees, Volunteers, Agents and Representatives and the Army Corp of Engineers listed as an additional insured

The above policies shall provide the City of Miami with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change, or in accordance to policy provisions.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

**EXHIBIT C**

**ADDITIONAL CHARGES (TO THE EXTENT APPLICABLE)**

1. City of Miami Police personnel
2. City of Miami Fire Rescue personnel
3. Light Pole, Benches, Bike Racks Removal/Reinstall
4. Chain Link Fence Removal
5. Solid Waste Downtown
6. Solid Waste Trash Hauling
7. Taxes
8. Trash Bags
9. Drums/oil containers and/or disposal fees