



LICENSE AGREEMENT

This License Agreement (hereinafter referred to as the "Agreement") is made between the **Texas Facilities Commission** (hereinafter referred to as "TFC"), a state agency of the State of Texas, and the **Downtown Austin Development Corporation DBA Downtown Austin Alliance Foundation** (hereinafter referred to as the "Licensee") for the use of the rooftop of **Parking Garage N** located at 300 San Antonio Street, Austin, Texas 78701, for the limited purposes set out below. TFC, acting on behalf of the State of Texas, and Licensee hereby agree to this Agreement upon the terms and conditions as follow:

1. **PREMISES.** TFC licenses Licensee to use the rooftop of Parking Garage N located at 300 San Antonio Street in Austin, Texas 78701 (hereinafter referred to as "Premises").

2. **USE OF PREMISES.**

(a) TFC grants Licensee permission to use the Premises for drive-in movies, live concerts or other social events (collectively, "Event", whether one or more). There shall be no seating areas. All attendees must occupy their motor vehicles for the duration of the Event except for the use set out in Section 2(d) below. Such motor vehicles must be parked in a designated parking space.

(b) Licensee may use the Premises for permitted Events on Wednesday, Thursday, Friday and weekends only between the hours of six o'clock p.m. and two o'clock a.m. (the following morning) which includes cleanup and restoration for parking by State employees..

(c) Licensee may have one locked storage container on the Premises for equipment storage between Events, the size and location of which to be agreed upon in writing by TFC and Licensee.

(d) Licensee may keep and maintain two (2) first-quality, lockable portable toilets on the Premises in a location to be agreed upon in writing by TFC and Licensee.

(e) The sale of food, alcoholic and non-alcoholic beverages on the Premises is prohibited.

(f) The use of the Premises requires strict compliance with the City of Austin sound ordinances and any state or city executive orders or guidelines related to the COVID-19 pandemic. The use of fireworks on the Premises is specifically prohibited under this Agreement.

3. **TERM.** The term of this Agreement commences August 15, 2020 and continues through and including October 31, 2020. Upon mutual agreement of both parties, this Agreement may be extended for a term to be determined. TFC reserves the right to approve or deny such a request in its discretion and has no duty to be reasonable in its discretion.

4. **CANCELLATION.** Either party may cancel this Agreement by serving seven (7) calendar days' written notice by email and by letter deposited into the United States mails addressed to the other party.

5. **LICENSE FEE.** The consideration for this Agreement is as follows:

(a) Licensee shall pay TFC the sum of \$10.00 for each Event.

(b) Parking fees shall be agreed upon in writing and may be adjusted by TFC and Licensee for each Event and shall be divided in accordance with TFC's contract with HBA Parking Contract 18-002-000).

6. **PAYMENT.**

(a) During the term of this Agreement, payment for each Event is due on a monthly basis no later than the tenth business day of each month for the immediately preceding month. Event payments under this Agreement shall be made payable to:

Texas Facilities Commission
Attn: Fiscal Management
Post Office Box 13047
Austin, Texas 78711-3047

(b) The license fee shall be considered late if not received within ten (10) days of the due date. In the event of a late payment, an additional fee equal to five percent (5%) of the total payment will be assessed by TFC.

(c) Payment for parking fees is due for each Event on a nightly basis to HBA Parking. Parking fees under this Agreement shall be made payable to:

HBA Parking System, Inc.
209 W. 9th Street, Suite B103
Austin, Texas 78701

7. **POINT OF CONTACT.** TFC and Licensee designate respective points of contact under this Agreement as follows:

For TFC: Texas Facilities Commission
Attn: Laura Hall
Program Supervisor, Parking & Special Event
1711 San Jacinto Blvd.
Austin, Texas 78701
Telephone: (512) 463-8848 office (512) 563-9273 cell
E-mail: laura.hall@tfc.texas.gov

With a copy to: Legal Services Division
Texas Facilities Commission
1711 San Jacinto Boulevard, 4th Floor
Austin, Texas 78701

For Licensee: Downtown Austin Development Corporation
DBA Downtown Austin Alliance Foundation

Attn: Molly Alexander, Executive Director
515 Congress Avenue, Suite 2150
Austin, Texas 78701
Telephone: (512) 469-1766
Email: malexander@downtownaustin.com

8. **SECURITY.** Licensee is solely responsible for providing security services for the Premises during its use under this Agreement. Licensee shall be responsible for any and all damages to the Premises caused by its use under this Agreement. TFC shall not be liable for any personal injury or property damage, including loss or damage to possessions, during use by Licensee under this Agreement, and Licensee shall indemnify and hold harmless TFC as set out hereafter.

9. **INSURANCE.** Licensee shall obtain and maintain, in full force at all times during the term of this Agreement, Comprehensive General Liability policy in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, naming TFC as an additional insured and loss/payee on its policy. Evidence of the insurance coverage required to be maintained by Licensee, represented by certificate(s) of insurance issued by the insurance carrier(s), must be furnished to TFC prior to the commencement of this Agreement. This insurance shall not be cancelled, materially changed, or non-renewed until after thirty (30) days prior written notice has been given to TFC.

10. **INDEMNITY.** In the event damage occurs to the Premises during permitted use under this Agreement, Licensee shall serve notice and a detailed description (including photographs) of the damages within three (3) calendar days. **LICENSEE HEREBY INDEMNIFIES AND HOLDS TFC HARMLESS FROM AND AGAINST DAMAGES FOR INJURY TO OR DEATH OF PERSONS, AND FOR DAMAGE TO OR DESTRUCTION OF THE PREMISES OCCURRING DURING LICENSEE'S USE TO THE EXTENT CAUSED BY THE NEGLIGENCE OF LICENSEE, ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, SUBLICENSEES, INVITEES, PARTICIPANTS OR SPECTATORS IN THE CONDUCT OF LICENSEE'S OPERATIONS HEREUNDER AND TO THE EXTENT SUCH LOSS IS NOT OTHERWISE COVERED BY ANY INSURANCE OR TO THE EXTENT THAT SUCH LOSS IS NOT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TFC, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AUTHORIZED REPRESENTATIVES. ANY AND ALL ACTIVITIES UNDERTAKEN BY LICENSEE, WHICH ARE NOT WITHIN THE SCOPE OF THIS AGREEMENT, SHALL BE THE SOLE LIABILITY OF LICENSEE DURING THE TERM OF THIS AGREEMENT.**

11. **REFERENCE TO THE STATE OF TEXAS.** Licensee shall not display the State of Texas Seal or mention the State of Texas in any advertisement or promotional material.

12. **SIGNAGE.** Licensee shall not place any permanent signs at, on, or, about the Premises. Any temporary signage shall be removed immediately at the conclusion of use under the Agreement.

13. **CONDITION OF PREMISES.** Licensee shall take possession of the Premises as-is. At the conclusion of each use for an Event, Licensee must clean the Premises as necessary to restore it to the condition it was received including the driveways and ramps and removal of cones, signage and equipment. In the event Licensee fails to clean the Premises, it will be charged a \$1,000.00 cleaning fee for each Event which fee Licensee shall pay before the next Event.

14. **ASSIGNMENT.** Licensee may not assign or sublease its use rights under this Agreement.

15. **ACCESS BY TFC TO PREMISES.** TFC shall have the right to enter the Premises to make inspections at any time without notice.

16. **STRICT PERFORMANCE.** The failure of TFC to insist in any one or more instances of strict performance regarding any of the covenants in this Agreement shall not be construed as a waiver or relinquishment for any future covenants, but the same shall continue and remain in full force and effect.

17. **SEVERABILITY.** In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or enforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Texas, and venue of any legal action filed by either TFC or Licensee shall be in Travis County, Texas and in a state court of competent jurisdiction.

19. **NO AUTHORITY TO TOW VEHICLES.** Licensee does not have the authority to tow any vehicles that are not owned or authorized for use by Licensee and shall be solely responsible for any acts that conflict with this provision.

20. **AUTHORITY TO EXECUTE.** TFC and Licensee each certify that the persons executing this Agreement are duly authorized to bind each respective party in the full performance of this Agreement.

21. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement may be modified or amended in writing if signed and agreed to by all parties.

22. **AUTHORITY.** This Agreement is authorized pursuant to Texas Government Code Ann., Chapter 2165.

SIGNED on the dates opposite our signatures below.

TEXAS FACILITIES COMMISSION

DocuSigned by:
By: Mike Novak, Executive Director Date: 08/19/2020 | 2:29 PM CDT
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Mike Novak, Executive Director

MGR LA

GC SEHAC

COO JSLOA

LICENSEE:

**DOWNTOWN AUSTIN DEVELOPMENT CORPORATION
DBA DOWNTOWN AUSTIN ALLIANCE FOUNDATION**

DocuSigned by:
 Date: 08/19/2020 | 12:18 PM PDT
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Molly Alexander, Executive Director