An ordinance authorizing and directing execution of a Festival Reservation Agreement between the City and Summer Rocks, LLC ("**Summer Rocks**"), a Delaware limited liability company, which Agreement reserves, during Memorial Day and Labor Day weekends, a portion of the Gateway Mall and certain street rights-of-way adjacent to the Gateway Mall to Summer Rocks for the conduct of music festivals, for up to twenty (20) years.

WHEREAS, the City owns certain real property located in the downtown area of the City of St. Louis, Missouri, which consists of eighteen (18) blocks of park-like space commonly known as the Gateway Mall and also controls adjacent street rights-of-way; and

WHEREAS, outdoor music festivals are activities that frequently occur in park facilities; and

WHEREAS, Summer Rocks is affiliated with entities and persons with significant experience in producing world class outdoor high-quality music festivals and significant representation of musical talent that can attract wide audiences; and

WHEREAS, Summer Rocks has identified the City of St. Louis as an ideal central location for world class outdoor high-quality music festivals and wishes to stage such world class outdoor high-quality music festivals in portions of the Gateway Mall and on adjacent street rights-of-way on three-day Memorial Day and Labor Day weekends for ten (10) calendar years and, if such festivals are successful, for additional years; and

WHEREAS, presenting such world class high-quality music festivals requires substantial investments of time and money in, among other things, designing and constructing quality performance stages and fencing and Summer Rocks is unwilling to make such investments without a commitment from the City that the portion of the Mall on which Summer Rocks wishes to present such festivals will be available during Memorial Day and Labor Day weekends for the next ten (10) calendar years, with the option to extend such period for additional years; and

WHEREAS, the City recognizes that recurring world class high-quality music festivals will enhance both the City's image and its tax revenues and wishes to provide Summer Rocks with assurances that if Summer Rocks fulfills the commitments set forth in this Agreement the City will refrain from offering permits to others for the Summer Rocks festival reservation periods during Memorial Day and Labor Day weekends during the term of the Agreement and will otherwise fulfill the City commitments set forth in this Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Board of Aldermen hereby approves, and the Mayor and the Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Festival Reservation Agreement, attached hereto as **Exhibit A** and incorporated herein by this reference, after approval by the Board of Estimate and Apportionment, substantially in the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same with the advice and concurrence of the City Counselor and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the intent of the Festival Reservation Agreement, and are further authorized and directed to enter into or execute other documents and instruments as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, all with no further action of the Board of Aldermen necessary to authorize such changes or execution of other documents and instruments by the Mayor and the Comptroller or their designated representatives.

<u>Exhibit A</u>

to

Board Bill # _____

(Form of Festival Reservation Agreement)

Follows on the next page.

FESTIVAL RESERVATION AGREEMENT

entered into by and between

Summer Rocks, LLC, a Delaware limited liability company
("**Summer Rocks**"),

and

The City of St. Louis, Missouri, a constitutional charter city of the State of Missouri
(the "**City**").

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FESTIVAL RESERVATION AGREEMENT

THIS FESTIVAL RESERVATION AGREEMENT (this "**Agreement**") is entered into by and between Summer Rocks, LLC, a Delaware limited liability company (**"Summer Rocks**"), and The City of St. Louis, Missouri, a constitutional charter city of the State of Missouri (the "**City**"). The effective date of this Agreement (the "**Effective Date**") is the later of the date that (a) the Register of the City attests to its full execution, as set forth below such Register's signature; and (b) the date that the Sponsor Agreement (as defined in Section 6.05 below) is fully executed

WHEREAS, the City owns certain real property located in the downtown area of the City of St. Louis, Missouri, which consists of eighteen (18) blocks of park-like space commonly known as the Gateway Mall and also controls adjacent street rights-of-way; and

WHEREAS, outdoor music festivals are activities that frequently occur in park facilities; and

WHEREAS, Summer Rocks is affiliated with entities and persons with significant experience in producing world class outdoor high-quality music festivals and significant representation of musical talent that can attract wide audiences; and

WHEREAS, Summer Rocks has identified the City of St. Louis as an ideal central location for world class outdoor high-quality music festivals and wishes to stage such world class outdoor high-quality music festivals in portions of the Gateway Mall and on adjacent street rights-of-way on three-day Memorial Day and Labor Day weekends for ten (10) calendar years and, if such festivals are successful, for additional years; and

WHEREAS, presenting such world class high-quality music festivals requires substantial investments of time and money in, among other things, designing and constructing quality performance stages and fencing and Summer Rocks is unwilling to make such investments without a commitment from the City that the portion of the Mall on which Summer Rocks wishes to present such festivals will be available during Memorial Day and Labor Day weekends for the next ten (10) calendar years, with the option to extend such period for additional years; and

WHEREAS, the City recognizes that recurring world class outdoor high-quality music festivals will enhance both the City's image and its tax revenues and wishes to provide Summer Rocks with assurances that if Summer Rocks fulfills the commitments set forth in this Agreement the City will refrain from offering permits to others for the Summer Rocks festival reservation periods during Memorial Day and Labor Day weekends during the term of the Agreement and will otherwise fulfill the City commitments set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the above and other good and valuable consideration, the parties hereto agree as follows.

ARTICLE I - DEFINITIONS

In this Agreement, the capitalized terms defined below or in the body of the Agreement have the meanings set forth in those definitions unless the context unambiguously requires otherwise.

"**Admission Revenue**" means (i) the face values of all Tickets for which money is exchanged and all other revenue connected in any way with the admission of people to all or a portion of a Festival, including but not limited to charges relating to Ticket sales, admission fees, attendance fees, gate fees, cover charges and similar charges, without reduction for any Taxes or Summer Rocks or third party administrative, processing or handling fees.

"**Affiliate**" means, with respect to any Person including but not limited to Summer Rocks, (i) any Person directly or indirectly Controlling, Controlled by, or under common Control with such Person, (ii) any Person owning or Controlling, directly or indirectly, ten percent (10%) or more of the outstanding ownership interests of such Person, (iii) any officer, director, member, manager or partner of such Person, or (iv) any officer, director, member, manager or partner of a Person described in the foregoing clauses (i) or (ii).

"**Amusement Tax**" means the Entertainment License Tax imposed by Chapter 8.08 of the Revised Code of the City.

"**Applicable Law**" means any federal, state, or local law, governmental rule, regulation or ordinance, or judicial order or decree, including, without limitation, the Americans with Disabilities Act, the Missouri Workers Compensation Act, the Occupational Health and Safety Act, City, Missouri, equal opportunity and non-discrimination laws, and criminal laws.

"**BOTFR**" means BOTFR, LLC, a Delaware limited liability company (a) whose members are Affiliates of ICM Partners, LLC, a Delaware limited liability company; and (b) which is a member of Summer Rocks.

"**BPS**" means the Board of Public Service of the City.

"**Board**" means the Board of Aldermen for the City.

"**Business Day**" means any day other than a Saturday, Sunday or legal holiday in the State of Missouri or in the City on which government offices are closed for general business.

"**Cancellation Fee**" is defined in **Section 6.2(d)** below.

"**Change of Control**" means, with respect to Summer Rocks, any one or more of the following, to the extent not approved in writing by BPS: (a) the sale, assignment, pledge, hypothecation, transfer or other disposition of any of the rights or obligations of Summer Rocks under this Agreement, (b) during the first five (5) years of the Term, any change in the ownership or Manager(s) of Summer Rocks such that, upon the effectiveness of any such change, BOTFR and K5P2, and/or their respective Members, do not Control Summer Rocks; (c) during the first five (5) years of the Term, any change in the beneficial ownership of the

membership interests of Summer Rocks such that, upon the effectiveness of any such change, BOTFR and K5P2, and/or their respective Members, are no longer Managers of Summer Rocks; or (d) during the Initial Term, BOTFR, or a member of BOTFR, ceases to be a Manager of Summer Rocks; provided, however, that (i) if Summer Rocks hires staff or Subcontractors who work under the direction of Summer Rocks or its Managers and the Manager or managing Members of Summer Rocks retain Control of Summer Rocks and the Festivals, such hiring of staff or Subcontractors shall not be deemed a Change of Control; and (ii) any pledge, assignment or other assignment made by Summer Rocks for the purpose of borrowing funds for its operation, such actions shall not be a Change of Control. Following the first five (5) years of the Term, any change in the beneficial ownership of the membership interests of Summer Rocks shall be a Change of Control if (x) upon the effectiveness of any such action, BOTFR is no longer a Member of Summer Rocks; and (y) Summer Rocks either (i) fails to reasonably demonstrate to the satisfaction of the Liaison that a qualified Person in the business of entertainment, concert promotion and/or concert production (or other substantially similar areas as may be mutually agreed to be the parties) and whose qualifications are equal to or better than those BOTFR and/or its Members will Control Summer Rocks after such change; or (ii) fails to obtain the approval of BPS for such change; provided, however, that if such change in the beneficial ownership of the membership interest takes place in the Initial Term, it shall be deemed a Change of Control if a Member of BOTFR is not a Manager of Summer Rocks.

"**Code**" means the Revised Code of the City, as such Code may be amended from time to time and in effect at the time of a particular Festival.

"Collector" means the City's Collector of Revenue.

"Comped Tickets" means those Tickets furnished to Sponsors without the imposition of any charge, as calculated using the price of a general admission Ticket for the purpose of this Agreement.

"**Control**" means, with respect to any Organization or trust, possession of the power to direct or cause the direction of management and policies of such Organization or trust, directly or indirectly, whether through the ownership of an equity interest, by contract, trust indenture, or otherwise.

"**E&A**" means the Board of Estimate and Apportionment for the City.

"**Effective Nonproduction Notice**" is defined in in **Section 6.1** below.

"**Equity Investor**" means one or more Persons who invests money in Summer Rocks or an Affiliate with the expectation of generating a monetary return on such investment. A Sponsor is not an Equity Investor.

"**Event of Default**" is defined in **Section 0** below.

"**Fee**" means a charge imposed by the City or other governmental entity for such entity's performance of a specific service (e.g., an inspection fee).

"**Festival**" means a two-day or three-day, multi-stage musical festival Produced by Summer Rocks in the Festival Performance Area reasonably determined to be of high-quality and world class.

"**Festival Areas**" means the Festival Performance Area, together with Primary Festival Loading Area and the Secondary Festival Loading Area, as such area or areas may be amended from time to time with the written agreement of Summer Rocks and the Liaison; provided, however, that any change in the Festival Area of ten (10) percent or more shall require the prior written approval of BPS.

"**Festival Enclosure**" means the physical barriers erected to bar entry to a Festival by Persons other than Ticket holders, together with entry and exit openings in the barriers.

"**Festival Name**" means the name designated by Summer Rocks and all derivative and related names thereof.

"**Festival Performance Area**" means the geographic area located within the City and described on **Exhibit A** attached hereto and incorporated herein by this reference on which Summer Rocks may Produce Festivals during the Festival Weekends.

"**Festival Performance Period**" means, with respect to each Festival Weekend, the period commencing at __:00 a.m. on the Friday of a Festival and ending at __ p.m. on the Monday of such Festival Weekend during which Summer Rocks shall produce a Festival; provided, however, that each Festival Performance Period shall be at least two consecutive days but not more than three consecutive days of such Friday through Monday period.

"**Festival Periods**" means the Festival Performance Period, together with the Primary Festival Loading Period and the Secondary Festival Loading Period.

"**Festival Plan**" is defined in **Section 8.1** below.

"**Festival Reservation Fees**" means the payments to be made by Summer Rocks to the City in consideration of the City's agreements herein, as further delineated in **Section 0** and **Section 0** below.

"**Festival Weekend**" means any Memorial Day Weekend or Labor Day Weekend, or both, during the Term of this Agreement; provided, however, that if this Agreement is terminated with respect to either such weekend, but not both, then "Festival Weekend" shall mean only the category of weekend for which this Agreement has not been terminated.

"**Festival Zone**" means the geography outside the Festival Areas designated as the Festival Zone on **Exhibit A**, as the same may be modified from time to time by mutual agreement of Summer Rocks and BPS**.**

"**Food Truck**" means a motorized vehicle that transports and sells food whether or not associated with a fixed location restaurant and whether or not the food is cooked within the vehicle.

"**Force Majeure Event**" is defined in **Section 0** below.

"**Initial Minimum Per-Festival Reservation Fee**" means, for each Festival Weekend during the Initial Term, the minimum payment to be made by Summer Rocks to the City for such Festival Weekend in consideration of the City's agreements herein, as further delineated in **Section 0** and **Section 0** below.

"**Initial Per-Festival Reservation Fee**" means, for each Festival Weekend during the Initial Term, the total payment to be made by Summer Rocks to the City for such Festival Weekend in consideration of the City's agreements herein, as further delineated in **Section 2.3** and **Section 0** below.

"**Initial Term**" is defined in **Section 0** hereof.

"**Insurance Consultant**" means a Person that is not Summer Rocks or an employee, partner, member, director or officer, Subcontractor, or Affiliate of Summer Rocks and which shall not have a partner, member, director, officer or employee who is an officer or employee of any Summer Rocks or any Affiliate thereof, who is appointed by the Liaison (but compensated by Summer Rocks) and qualified to survey risks and to recommend insurance coverage for large, multi-day, high-quality outdoor music festivals, has actuarial personnel experienced in insuring such festivals or arrangements with such personnel for actuarial services required to perform the duties of an Insurance Consultant hereunder, and has a favorable reputation for skill and experience in making such surveys and recommendations. An Insurance Consultant may not be a broker or agent with whom Summer Rocks or an Affiliate of Summer Rocks currently transacts business or has previously transacted business.

"**Insurance Requirements**" is defined in **Section 04** below.

"**K5P2" means K5P2, LLC,** a Missouri limited liability company (a) whose members have a demonstrated commitment to the vitality and success of the City, as hereby acknowledged by the City; and (b) which is a member of Summer Rocks.

"**Labor Day Weekend**" means a weekend adjacent to the day on which the Labor Day federal holiday occurs and including the Fridays, Saturdays, Sundays, and holiday Mondays of such weekend.

"**Liabilities**" is defined in **Section 0** below.

"**Liaison**" is defined in **Section 0** below.

"**License Fees**" means all fees and other costs customarily imposed by the City or the State relating to the conduct by a Person of a particular activity in the City or the State, in the amounts in effect at the time a Festival is Produced.

"**Manager**" means one or more Persons formally selected by the Members of Summer Rocks as to be the Manager(s) of Summer Rocks in accordance with Delaware's limited liability corporations law (which Persons may or may not be Members of Summer Rocks), as identified

in writing to the Liaison; provided, however, that such Managers may be replaced by the Members of Summer Rocks from time to time. Within ten (10) days of any such replacement, Summer Rocks shall notify the Liaison of the names of all the current Managers in accordance with Section 11.1.

"**Member**" means one or more Persons with beneficial ownership of the membership interests of Summer Rocks, provided that during the first five (5) years of the Term, BOTFR and K5P2, and/or their respective members, shall each be a Member.

"**Memorial Day Weekend**" means a weekend adjacent to the day on which the Memorial Day federal holiday occurs and including the Fridays, Saturdays, Sundays, and holiday Mondays of such weekend.

"**Minimum Per-Festival Reservation Fee**" means the Initial and Renewal Minimum Per-Festival Reservation Fees.

"**Minority Business Enterprise**" or "**MBE**" is defined in **Exhibit B** attached hereto.

"**Noise Ordinance**" means City Ordinance # 68130.

"**Nonproduction Notice**" is defined in **Section 6.1** below.

"**Organization**" means any Person other than an individual or a trust.

"**Per-Festival Reservation Fee**" means the fee applicable to either the Initial Term or the Renewal Term, depending on whether a Festival takes place in the Initial Term or the Renewal Term.

"**Perform**" means to display musical selections or engage in other activities to entertain Festival attendees.

"**Performance**" means a display of musical selections or other activities executed by Talent or others to entertain Festival attendees.

"**Permit Fees**" means all fees customarily imposed by the City or the State relating to a Person's use of public facilities or services in the City and the State or the protection of the public health and welfare, in the amounts in effect at the time a Festival is Produced.

"**Person**" means any individual, partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, domestic or foreign limited liability partnership, domestic or foreign corporation, trust, land trust, business trust, real estate investment trust, estate or other association or business entity.

"**Primary Festival Loading Area**" means the area which Summer Rocks may use to set up for a Festival prior to a Festival and take down a Festival following a Festival as delineated on **Exhibit A** during the Primary Festival Loading Period, as defined herein, as such area or areas may be amended from time to time with the mutual written agreement of Summer Rocks and BPS.

"**Primary Festival Loading Period**" means the time period commencing at _:00 a.m. on the Thursday of the week prior to each Festival (i.e., approximately __ days prior to the start of a Festival) and ending at _:00 p.m. on the _____ following the last day of a Festival, as such area or areas may be amended from time to time with the mutual written agreement of Summer Rocks and BPS.

"**Produce**" means, with respect to each Festival, that Summer Rocks will, directly or indirectly, cause all of the following to be performed as required by this Agreement:

(a) solicit and enter into contracts with sufficient quantities of Talent entities suitable for a Festival;

(b) pay for all such Talent and fulfill other terms of the certain Talent contracts;

(c) provide and pay for the construction and erection of a minimum of one (1) main stage and one (1) side stage for use during the Festival Performance Periods within the Festival Performance Area;

(d) provide and pay for all necessary or desirable ancillary facilities, personnel, and services, including but not limited to sanitation facilities and services, security services, and other public safety services;

(e) provide and pay for Festival Enclosures;

(f) market each Festival according to the best practices of the musical concert industry;

(g) open each Festival and close each Festival;

(h) provide musical entertainment between the opening and closing of each Festival during the times agreed upon with the Liaison;

(i) set up and take down each Festival in the Primary Festival Loading Area and Secondary Festival Loading Area during the Primary Festival Loading Period and Secondary Festival Loading Period respectively as defined herein;

(j) within the time required by this Agreement after the conclusion of each Festival, restore the Festival Areas;

(k) take such other actions and provide and pay for other facilities and services as are necessary for the successful operation of each Festival;

(l) supervise, contract for, and be responsible for all aspects of each Festival;

(m) otherwise conduct each Festival in accordance with the highest standards of the musical concert industry; and

(n) pay all costs associated directly or indirectly with each Festival.

All capitalized forms of the word "**Produce**" shall incorporate all of the elements required to Produce a Festival as set forth in this definition.

"**Renewal Minimum Per-Festival Reservation Fee**" means, for each Festival Weekend during the Renewal Term, the minimum payment to be made by Summer Rocks to the City for such Festival Weekend in consideration of the agreements herein , as further delineated in **Section 0** and **Section 0** below.

"**Renewal Per-Festival Reservation Fee**" means, for each Festival Weekend during the Renewal Term, the total payment to be made by Summer Rocks to the City for such Festival Weekend in consideration of the City's agreements herein, as further delineated in **Section 0** and **Section 0** below.

"**Renewal Term**" is defined in **Section 3.2** hereof.

"**Representative**" is defined in **Section 0** below.

"**Secondary Festival Loading Area**" means the area which Summer Rocks may use to set up for a Festival prior to a Festival and take down a Festival following a Festival as delineated on **Exhibit A** during the Secondary Festival Loading Period, as defined herein, as the same may be modified from time to time by mutual agreement of Summer Rocks and BPS.

"**Secondary Festival Loading Period**" means the time period commencing at _:00 _.m. on the _____ prior to each Festival and ending at _:00 _.m. on the _____ following the last day of a Festival, as the same may be modified from time to time by mutual agreement of Summer Rocks and BPS.

"**Sponsor**" means a Person or other entity who contributes or promises to contribute money, goods, or services to a Festival, with no expectation of return on that contribution other than advertising, name recognition, free attendance at one or more Festivals, good will, and/or other non-monetary return. An Equity Investor is not a Sponsor.

"**Sponsor Agreement**" is defined in **Section 6.16** below.

"**State**" means the State of Missouri.

"**Subcontract**" means any oral or written agreement between a Subcontractor, on the one hand, and Summer Rocks, an Affiliate of Summer Rocks, or a Subcontractor at any tier, on the other hand.

"**Subcontractor**" means any contractor, subcontractor (at any tier), independent contractor, agent, artist, band, act, volunteer, or other party that Summer Rocks or any Affiliate of Summer Rocks contracts with or engages to perform all or any portion of its responsibilities and/or provide services related in any way to any Festival, including but not limited to members, partners, Affiliates, and Persons otherwise affiliated in any way with Summer Rocks.

"**Talent**" means a musical artist or group of musical artists and/or other entertainers retained or proposed to be retained by Summer Rocks or an Affiliate or Subcontractor of Summer Rocks to perform at a Festival.

"**Taxes**" means all charges customarily levied by the State, the City, or any other political jurisdiction of the State with the power to impose taxes in the City, including but not limited to sales, use, earnings, payroll, and income tax imposed on transactions, income, payroll, ownership of property, and other taxable activities and items on which the State, the City, or such other political jurisdiction imposes a tax, including but not limited to sales tax on Admission Revenues and the sale of goods, food, and beverages at any Festival, earnings and payroll tax on compensation paid to Talent and other workers, and use tax on out-of-state purchases brought into the City for final use, in the amounts in effect at the time a Festival is Produced.

"**Term**" means both the Initial Term and the Renewal Term, as set forth in **Section 0** hereof.

"**Ticket**" means the granting of one individual person's right (or the evidence of such right) to be admitted to all or a portion of a Festival (other than in the capacity of an employee performing work at the Festival as an employee of the City, the State, Summer Rocks, or a Summer Rocks Affiliate or Subcontractor), whether or not a charge is imposed for such right, whether or not such individual has the right to be admitted pursuant to a group entry pass or similar device or as part of a group, and whether or not such person is actually admitted. For the purposes of this definition, "Ticket" shall also include any Comped Tickets in excess of fifteen percent (15%) of all Tickets sold and as calculated based on the price of a general admission Ticket for each such Comped Ticket.

"**Tickets Issued**" is defined in **Section 2.3** below.

"**Unionized Person**" means a member of an organization of workers formed for the purpose of advancing its members' interests in respect to wages, benefits, and working conditions affiliated directly with the American Federation of Labor. For purposes of this Agreement, Talent is not one or more Unionized Persons whether or not such Talent belongs to such an organization.

"**Women's Business Enterprise**" or "**WBE**" is defined in **Exhibit B** attached hereto.

ARTICLE II - FESTIVAL RESERVATION

2.1 Reservation of Festival Areas. Subject to Summer Rocks' compliance with the terms and conditions set forth in this Agreement, the City hereby reserves, during the Term for Summer Rocks' exclusive use, (a) the Festival Performance Area during the Festival Performance Period; (b) the Primary Festival Loading Area during the Primary Festival Loading Period; and (c) the Secondary Festival Loading Area during the Secondary Festival Loading Period. Notwithstanding the preceding sentence, if Summer Rocks provides the City with a Nonproduction Notice for a particular Festival Weekend as provided in **Section 0** hereof that Summer Rocks will not Produce a particular Festival, the City may use the Festival Area for any

lawful purpose (including but not limited to a music festival produced by other Persons) during such Festival Weekend without regard to this Agreement except that such use shall comply with the non-competition provisions of **Section 7.4**.

2.2 Adjustment of Festival Areas and Festival Periods. BPS and Summer Rocks may, by mutual agreement, adjust (i) the geographic locations of the Festival Performance Area, the Primary Festival Loading Area, and Secondary Festival Loading Area; and (ii) the durations of the Festival Performance Period, the Primary Festival Loading Period and Secondary Festival Loading Period.

2.3 Payments for Reservation of Festival Areas. In consideration of the City's agreements herein, Summer Rocks will pay to the City, for each Festival in each year during the Initial Term, Festival Reservation Fees equal to the greater of (a) (i) the amount of Admission Revenue for that Festival, multiplied by (ii) the percentage set forth in the following table corresponding to the total number of "Tickets Issued" for that Festival (the "**Initial Per-Festival Reservation Fee**"), or (b) $50,000 (the "**Initial Minimum Per-Festival Reservation Fee**"), calculated and remitted in accordance with **Section 0** below.

Tickets Issued	Per-Festival Reservation Fee
< 30,000	Initial Minimum Per-Festival Reservation Fee
30,000 – 40,000	1.0 % of Admission Revenue
40,001 – 50,000	1.5 % of Admission Revenue
50,001 – 60,000	2.0 % of Admission Revenue
60,001 – 70,000	4.0 % of Admission Revenue
70,001 – 80,000	5.5 % of Admission Revenue
80,001 – 90,000	7.5 % of Admission Revenue
> 90,000	10.5 % of Admission Revenue

In consideration of the City's agreements herein, Summer Rocks will pay to the City, during the Renewal Term of this Agreement, Festival Reservation Fees equal to the greater of (a) (i) the amount of Admission Revenue for that Festival, multiplied by (ii) the percentage set forth in the following table corresponding to the total number of "Tickets Issued" for that Festival (the "**Renewal Per-Festival Reservation Fee**"), or (b) $50,000 (the "**Renewal Minimum Per-Festival Reservation Fee**"), calculated and remitted in accordance with **Section 0** below.

Tickets Issued	Per-Festival Reservation Fee
< 30,000	Renewal Minimum Per-Festival Reservation Fee
30,000 – 40,000	2.0 % of Admission Revenue
40,001 – 50,000	2.5 % of Admission Revenue
50,001 – 60,000	3.5 % of Admission Revenue
60,001 – 70,000	5.5 % of Admission Revenue
70,001 – 80,000	8.0 % of Admission Revenue
80,001 – 90,000	11.0 % of Admission Revenue
> 90,000	15.0 % of Admission Revenue

For the purpose of determining the percentage of Admission Revenue that applies to a particular Festival Produced in the Initial Term or the Renewal Term and the calculation of such Festival's Per-Festival Reservation Fee pursuant to this **Section 2.3** and **Section 6.2**, (a) "**Tickets Issued**" means, with respect to any Festival Weekend, (i) all Tickets made available for such Festival, pursuant to the definition of Tickets above; and (b) for the avoidance of doubt, the "Per-Festival Reservation Fee" for each respective Festival shall be calculated in the aggregate, such that, for example, if there are 45,000 Tickets Issued for a Festival in the Initial Term, the Per-Festival Reservation Fee shall be 1.5% of Admission Revenue for such Festival and not the Minimum Per-Festival Reservation Fee for the Admission Revenue attributable to the first 30,000 of Tickets Issued plus 1.0% of Admission Revenue attributable to the next 10,000 of Tickets Issued plus 1.5% Admission Revenue attributable to the remaining 5,000 Tickets Issued.

ARTICLE III - TERM

3.1 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall end on the date that is ten (10) calendar years after the end of the first Festival Produced under this Agreement (the "**Initial Term**") unless this Agreement is terminated earlier in accordance with accordance with its provisions.

3.2 Renewals. Provided that Summer Rocks is not in default under this Agreement at such time as it gives renewal notice described herein below, Summer Rocks shall have the one time right, in the sole discretion of Summer Rocks, to extend the term of this Agreement for one period of ten (10) years (such extended period being referred to herein as the "**Renewal Term**"), unless this Agreement is terminated earlier in accordance with its provisions. In order to exercise such right to extend the term of this Agreement, Summer Rocks must give the City written notice of that exercise not later than two hundred seventy (270) days, nor earlier than two (2) years, prior to the expiration of the Initial Term, time being of the essence. During the Renewal Term, all of the provisions of this Agreement shall remain in full force and effect.

3.3 Term. The Initial Term and the Renewal Term shall be referred to herein collectively as the "**Term**."

ARTICLE IV - EARLY TERMINATION & SUSPENSION

4.1 Termination by Summer Rocks. Summer Rocks may, at any time and in its sole discretion, terminate this Agreement by providing notice of such termination to the City in

accordance with **Section 0** in the event that Summer Rocks determines in its sole discretion that Producing future Festivals will not be profitable or otherwise feasible.

In addition, Summer Rocks may, at any time and in its sole discretion, terminate this Agreement as to (a) all Memorial Day Weekends after such termination but not as to future Labor Day Weekends, or (b) all Labor Day Weekends after such termination but not as to future Memorial Day Weekends, by providing notice of such termination to the City in accordance with **Section 0,** such notice to be given to the City no later than one hundred eighty (180) days prior to the first such Festival Weekend to be terminated, time being of the essence.

4.2 Termination by City. The City may terminate this Agreement by providing notice of such termination to Summer Rocks in accordance with **Section 0** (a) at any time if Summer Rocks fails to Produce at least one (1) Festival during any two (2) consecutive 365-day periods on or after January 1, 2015; (b) at any time if death or serious injury to any one or more individual Persons, riot, or fire damage occurs in the Festival Zone at any Festival or in the performance area at any other event Produced by Summer Rocks, or an Affiliate of Summer Rocks; (c) if activities within the Festival Areas, the Festival Zone, and/or within 1,000 feet outside the Festival Zone constitute (i) a public nuisance as defined in Chapter 15.42.010(A) or (B) or Chapter 15.42.020 of the Code; or (ii) unlawful assembly as defined in Chapter 15.52.010 of the Code; or (d) if an Event of Default on the part of Summer Rocks occurs and is not cured within the time periods set forth with respect in **Section 10.6** for such default.

4.3 Effect of Expiration; Effect of Early or Other Termination. Upon expiration or termination of this Agreement, neither party shall thereafter have any further obligation or liability hereunder, except as to matters for which the provisions of this Agreement expressly survive termination as set forth in **Section 0** hereof and provided, however, that the obligations of Summer Rocks attributable or related to Festival Weekends prior to such expiration or termination shall survive any such expiration or termination. Notwithstanding the preceding sentence, if Summer Rocks terminates this Agreement with respect to either the remaining Memorial Day Weekends or the remaining Labor Day Weekends such that there remain in effect only Memorial Day Festival Weekends or Labor Day Festival Weekends, (a) neither party shall have any obligation or liability thereafter or hereunder as to such terminated Festival Weekends, except as to matters for which the provisions of this Agreement expressly survive termination as set forth in **Section 0** hereof; provided, however, that the obligations of Summer Rocks attributable or related to Festival Weekends prior to such termination shall survive any such termination; (b) the definition of "Festival Weekend" shall be deemed amended so as to delete the terminated type of Festival Weekends; and (c) all of the provisions of this Agreement shall remain in full force and effect as to the Festival Weekends that are not terminated.

4.4 Suspension or Cancellation by City. The City, through the Liaison, may, in its sole and absolute discretion, suspend this Agreement as to all or part of any particular Festival and prohibit that Festival or any portion thereof from opening to the public if the City believes, in reliance on reputable information from sources commonly relied on to support that type of belief, that opening all or part of that particular Festival would significantly endanger the health and/or safety of that Festival's workers and/or attendees. Situations that may cause the City to suspend a Festival include but are not limited to (a) alerts issued by the National Weather

Service as to tornadoes and thunderstorms; and (b) alerts issued by the U.S. Department of Homeland Security as to terrorist threats. If the City exercises this suspension or cancellation right, the Liaison shall work with Summer Rocks to reschedule the portion of the Festival that was scheduled to occur during the suspension by adding days to that Festival's Festival Performance Period or by reasonably extending that Festival's hours of operation; provided, however, that Summer Rocks shall have no obligation to reschedule such portion of the Festival, or otherwise extend such Festival's hours of operation.

4.5 **Termination if No Sponsor Agreement.** If the Sponsor Agreement is not fully executed on or before three hundred sixty-five (365) days following the Register attesting to the full execution of this Agreement (the "Attestation Date), this Agreement shall terminate immediately at the City's option upon written notice of such termination to Summer Rocks; provided, however, if the City fails to exercise such option to terminate within thirty (30) days after the Attestation Date, the option to terminate shall be deemed to be waived and of no further force or effect.

ARTICLE V - REPRESENTATIVES AND LIAISONS

5.1 **Summer Rocks Representative.** Within five (5) days after the Effective Date, Summer Rocks shall, by notice to the City in accordance with **Section 0**, appoint two (2) representatives (the "**Representative(s)**") who shall represent Summer Rocks and all Summer Rocks' Affiliates and Subcontractors in all of such entities' dealings with the City. The written approval, agreement, or other communication signed by either Representative in the form of an e-mail or other writing shall bind Summer Rocks. The City's communication with the Representatives, so long as in writing and sent to both Representatives, constitutes the City's communication with Summer Rocks and all of its Affiliates and Subcontractors.

5.2 **City Liaison.** Within five (5) days after the Effective Date, the Mayor of the City shall, by notice to Summer Rocks in accordance with **Section 0**, appoint a liaison (the "**Liaison**") who shall represent the City in all of the City's dealings with Summer Rocks and Summer Rocks' Affiliates and Subcontractors and who shall endeavor to assist Summer Rocks in identifying and obtaining the permits and licenses necessary for and identifying and complying with laws applicable to each specific Festival. Summer Rocks' or either Representative's communication with the Liaison constitutes communication with the City and all City departments reporting to the Mayor. The written approval, agreement, or other communication signed by the Liaison in the form of an e-mail or other writing shall bind the City, but only as to matters with respect to which this Agreement specifically delegates to the Liaison the authority to bind the City and not as to other matters, including, without limitation, those matters for which the authority to approve is reserved in the Board of Aldermen, the Mayor, E&A or an authority other than the Liaison. For the avoidance of doubt, Summer Rocks shall in no way be liable for any fees associated with the Liaison's services to the City hereunder.

5.3 **Replacements.** Summer Rocks may replace the Representatives and the Mayor may replace the Liaison by providing written notice thereof to the other party as provided in

Section 0 hereof. Such replacements may be made by either party in such party's sole and absolute discretion.

ARTICLE VI - SUMMER ROCKS OBLIGATIONS AND COVENANTS

6.1 **Labor Day and Memorial Festival Production**. Summer Rocks shall Produce a Festival during the Festival Periods within the Festival Performance Area on each Festival Weekend, beginning on the 2015 Memorial Day Weekend and on each Festival Weekend thereafter during the Term of this Agreement. Notwithstanding the preceding sentence and notwithstanding anything to the contrary in this Agreement, Summer Rocks shall have the right, in its sole discretion, to elect not to Produce a Festival on any given Festival Weekend, provided that Summer Rocks gives written notice to the City of such election (a "**Nonproduction Notice**") and pays the Cancellation Fee for such cancelled Festival, as provided in **Section 6.2(d)**. An unconditional Nonproduction Notice given to the City not less than one hundred eighty (180) days or more than three hundred sixty-five (365) days prior to the subject Festival Weekend, time being of the essence, is an "**Effective Nonproduction Notice**". Any Nonproduction Notice which is not an Effective Nonproduction Notice shall be effective to relieve the City from its obligations with respect to the applicable Festival Weekend, but shall not relieve Summer Rocks from its obligation to make payments to the City pursuant to **Section 6.2(d)** below. Summer Rocks may not revoke a Nonproduction Notice once tendered. The failure of Summer Rocks to submit a Festival Plan no later than one hundred twenty (120) days before the beginning of each Festival Performance Period in accordance with **Section 8.1** shall be deemed a Nonproduction Notice.

In addition to and notwithstanding the above, Summer Rocks may, at its option and in its sole discretion, Produce a Festival on one or more days during the 2014 Labor Day Weekend but only if Summer Rocks notifies the City no later than May 31, 2014, that Summer Rocks will exercise that option.

In connection with the Production of each Festival and in addition to fulfilling Summer Rocks' other obligations and covenants set forth in this Agreement, Summer Rocks shall, directly or indirectly, cause all of the following to be performed:

(a) solicit and enter into contracts with sufficient quantities of Talent entities suitable for a Festival and arrange for such Talent to provide musical and other performances to entertain Festival patrons between the opening and closing of each Festival during the times agreed upon with the Liaison during the Festival Performance Periods (provided, however, that any judgments regarding any such the sufficiency of quantities of Talent entities suitable for a Festival shall remain solely and completely within Summer Rocks' discretion);

(b) pay for all such Talent and fulfill other terms of the certain Talent contracts;

(c) provide and pay for the construction and erection of a minimum of one (1) main stage and one (1) side stages for use during the Festival Performance Periods within the Festival Performance Area in accordance with all City public safety requirements;

(d) market each Festival;

(e) open each Festival at the time agreed upon with the Liaison on the first day of each Festival Performance Period and close each Festival at the time agreed upon with the Liaison on the last day of each Festival Performance Period;

(f) set up and take down each Festival in the Primary Festival Loading Area and Secondary Festival Loading Area during the Primary Festival Loading Period and Secondary Festival Loading Period respectively as defined herein;

(g) take such other actions and provide and pay for other facilities and services as are necessary, in Summer Rocks' opinion, for the successful operation of each Festival;

(h) supervise, contract for, and be responsible for all aspects of each Festival (except that Summer Rocks shall not directly supervise City employees providing City services);

(i) pay all costs associated directly or indirectly with each Festival.

6.2 **Payments of Festival Reservation Fees.** Summer Rocks shall pay the Festival Reservation Fees as follows:

(a) **Initial or Renewal Prepayments.** No later than ninety (90) days prior to the commencement of each Festival Weekend, Summer Rocks shall pay 50% of the Initial or Renewal Minimum Per-Festival Reservation Fee to the City, as applicable.

(b) **Final Payments.** No later than ninety (90) days following the end of each Festival, Summer Rocks shall provide the City with an accounting of (i) the total number of Tickets made available for that Festival; (ii) the number of Comped Tickets made available for that Festival; and (ii) the amount of Admission Revenue attributable to that Festival.

If the applicable Per-Festival Reservation Fee, (calculated as set forth in **Section 2.3** for the applicable Term, exceeds the applicable Minimum Per-Festival Reservation Fee set forth in **Section 2.3**, Summer Rocks shall include with its accounting a payment to the City equaling (x) the total Per-Festival Reservation Fee minus (y) the amount previously paid to the City for such Festival pursuant to **Section 6.2(a)**.

If the applicable Per-Festival Reservation Fee, calculated as set forth in **Section 2.3** for the applicable Term, is less than the applicable Minimum Per-Festival Reservation Fee set forth in **Section 2.3**, Summer Rocks shall include with its accounting a payment to the City equaling (i) the applicable Minimum Per-Festival Reservation Fee, minus (ii) the amount previously paid to the City pursuant to **Section 6.2(a)**.

(c) **Festival Amusement Tax**. In the event that the City imposes the Amusement Tax on the sale of Tickets to a particular Festival, the Festival Reservation Fees for that Festival shall be reduced to the extent of such Amusement Tax; provided, the reduction provided for herein and the Amusement Tax itself shall not apply to any Comped Tickets.

(d) **Festivals Not Produced.** Notwithstanding **Section 0** and **Section 0**, if Summer Rocks provides an Effective Nonproduction Notice, Summer Rocks shall, in consideration of the fact that the City had reserved for Summer Rocks the Festival Areas during that Festival Weekend, pay to the City, within sixty (60) days after the provision of such Effective Nonproduction Notice, fifty percent (50%) of the applicable Minimum Per-Festival Reservation Fee that would otherwise be applicable to such Festival (a "**Cancellation Fee**").

If Summer Rocks fails to Produce a Festival on any Festival Weekend without tendering an Effective Nonproduction Notice to the City with respect to such Festival Weekend, the City may sustain damages in excess of the Cancellation Fee amount and the exact extent of such damages would be difficult or impossible to ascertain. Therefore, as liquidated damages and not as a penalty, Summer Rocks shall, no later than thirty (30) days following the last day of that Festival Weekend, pay to the City the greater of (i) fifty percent (50%) of the total amount of the Festival Reservation Fees paid pursuant to **Section 0** and **Section 0** with respect to the most recent previous Festival that was actually Produced with the same type of Festival Weekend music (e.g., rock or country); or (ii) the applicable Minimum Per-Festival Reservation Fee. Such payment shall liquidate the City's damages only as to the cancellation of such Festival and not as to any other damages to which the City may be entitled pursuant to this Agreement.

(e) **Records.** For each Festival, Summer Rocks shall make all of its records relating to all Tickets, Comped Tickets, admission rights provided to workers and Equity Investors, Ticket pricing, Ticket classifications, and Admission Revenue available to the Liaison and such City accounting staff or consultants as the Liaison deems appropriate for the sole purpose of verifying that the amount of Festival Reservation Fees paid is the amount owed to the City pursuant to this Agreement; provided, however, that (i) neither the Liaison nor any City accounting staff or consultants shall carry any copies or other duplicates of such records or any notes relating to such records from the place where Summer Rocks made the records available, and (ii) Summer Rocks is not required to make such records available any sooner than sixty (60) days after the end of each Festival nor any later than three (3) years after the end of each Festival.

6.3 **Payments to City for City Services.** Summer Rocks shall pay the cost of City services associated with each Festival up to a maximum amount of four hundred thousand dollars ($400,000) per Festival, adjusted each year for inflation in accordance with the Consumer Price Index or comparable inflation index (the "City Services Cap") unless Summer Rocks chooses to otherwise increase such City Services Cap, as follows. Payments for Taxes, licenses, and permits are not City services and shall not be included in or limited by the City Services Cap.

(a) **Estimated City Service Costs.** When the Liaison and the Representatives have agreed on a Festival Plan pursuant to **Article VII** hereof, the Liaison shall, no later than forty-five (45) days prior to the start of the applicable Festival Weekend, provide Summer Rocks with a detailed good faith estimate of the actual cost of the City services, up to the City Services Cap, included in the applicable Festival Plan or reasonably deemed necessary by the Liaison to adequately protect the public health and welfare. Summer Rocks agrees that such estimate is not binding on the City and that factors beyond the control of the City or Summer Rocks may

necessitate the provision of additional City services to or on account of a particular Festival. If Summer Rocks objects to the estimated cost, the Liaison will schedule a meeting with the Persons who developed the estimates to attempt to resolve the Summer Rocks objections. Summer Rocks agrees that the City's costs include all benefit costs, overtime costs, and reasonable overhead costs.

(b) Required Prepayment. No later than thirty (30) days prior to the first day of each Festival Weekend, Summer Rocks shall pay to the City 50% of the City Services Cap (i.e., $200,000).

(c) Traffic Circulation around Tucker and Market. Further, notwithstanding the City Services Cap and in addition to amounts payable to the City pursuant to **Section 6.3(a) and Section 6.3(b)** in the event that such Festival Plan involves closing the intersection of Market Street and Tucker Boulevard before 6 p.m. on the Friday immediately preceding any Festival Weekend or after 7 a.m. on the Tuesday immediately following such any Festival Weekend, Summers Rock shall pay to the City the actual cost of City Services reasonably deemed necessary by the Liaison for the purposes of adequately protecting the public health and welfare and providing efficient and orderly circulation of traffic around such closures, and, if an estimated cost for such purposes is provided by the Liaison to Summer Rocks more than forty-five (45) days prior to a Festival, Summer Rocks shall pay 50% of such estimated cost to the City no later than thirty (30) days prior to the first day of each Festival Weekend.

(d) Final Payment or Refund. No later than forty-five (45) days after the end of each Festival Weekend for which the City has provided services, the Liaison shall provide Summer Rocks with a detailed written accounting of the actual cost of City services provided to that Festival. No later than thirty (30) days following receipt of that detailed accounting, Summer Rocks shall pay to the City the following amount: (i) the total actual cost of City services set forth in that detailed accounting up to and including the City Services Cap amount, minus (ii) the amount previously paid by Summer Rocks to the City for that Festival pursuant to **Section 0** hereof; provided, however, that if the foregoing calculation results in a negative amount, the City shall refund that amount to Summer Rocks within the same time period.

Further and notwithstanding the above, the Liaison shall determine the number of full or partial days during which the intersection of Market Street and Tucker Boulevard was closed before 6 p.m. on the Friday immediately preceding that Festival Weekend or after 7 a.m. on the Tuesday immediately following that Festival Weekend. No later than thirty (30) days following receipt of that detailed accounting, Summer Rocks shall pay any additional fee due with respect to such closures or shall receive a refund if based on whether the amount already paid under **Section 0** multiplied by the actual number of days of such closure is more or less the City's actual costs thereunder.

(e) Provision of Additional Services by Summer Rocks. The City shall provide services to Summers Rock with an actual cost to the City not in excess of the City Services Cap, unless Summer Rocks agrees to an upward adjustment of the City Services Cap. If the Liaison determines that additional services are reasonably required to protect the public

health and safety, Summer Rocks shall provide and pay for such services using private contractors, at no cost to the City.

6.4 Clean-Up and Restoration of Festival Areas. (a) Clean-Up. Summer Rocks shall (a) remove all parts of any Festival Enclosure and all Festival-related objects that obstruct or restrict access to accessibility curb ramps and wheelchair travel between such curb ramps before 5 a.m. on the day immediately following the end of each Festival Performance Period; (b) remove the remainder of any Festival Enclosure before 5 p.m. on the day immediately following the end of each Festival Performance Period; and (c) remove all trash and debris from all of the Festival Areas and the Festival Zone and otherwise ensure that at the end of each Festival Period the public streets and sidewalks within and adjacent to the Festival Area associated with that Festival Period are free of debris and obstructions and re-opened for use by the public before 5 p.m. on the day immediately following the end of each Festival Performance Period. The Liaison and Summer Rocks may mutually agree in writing, prior to each Festival, that Summer Rocks will engage the City to perform such clean-up and that Summer Rocks will pay the City's actual costs associated therewith.

(b) Restoration. Within sixty (60) days following the last day of each Festival, Summer Rocks shall complete, at no cost to the City, the restoration of the Festival Areas to the same conditions as existed in such Festival Areas prior to the commencement of each Festival or to such lesser standard as BPS determines to be acceptable. The Liaison and Summer Rocks may mutually agree in writing, prior to each Festival, that Summer Rocks engages the City to perform such restoration and that Summer Rocks will pay the City's costs associated therewith.

(c) Clean-up or Restoration Default. If Summer Rocks does not engage the City to perform clean-up and/or restoration for a particular Festival per Subsections (a) and (b) above and Summer Rocks fails to perform clean-up and/or restoration in the manner and before the deadlines set forth in per Subsections (a) and (b) above, subject to Section 10.6(b), the City may (but is not obligated to) thereafter perform such clean-up or restoration and, in such event, Summer Rocks hereby agrees to pay to the City (y) reimbursement for the City's actual costs to complete such restoration (including reasonable third party costs, if any); plus (z) a management fee equal to ten percent (10%) of such costs. Payments due pursuant to this Subsection shall be tendered to the City within thirty (30) days after the City issues a bill therefor.

6.5 Taxes, Permits, and Licenses. Summer Rocks shall obtain a City business license for each year during the Term of this Agreement. Summer Rocks shall fulfill all requirements, obtain, and pay for all permits, licenses, inspections, and services required by any Applicable Law for any and all aspects of each Festival, and shall pay all Fees and Taxes levied or imposed by any governmental jurisdiction pursuant to any Applicable Law for any and all aspects of each Festival. Summer Rocks hereby guarantees that all Talent, and each member of each group comprising Talent, and each of its Subcontractors and Affiliates will (a) obtain and pay for a City business license for any year in which such Talent, Subcontractor or Affiliate performs work in or with respect to the City, prior to engaging in any activity related in any way to a Festival; (b) obtain and pay for all applicable permits, licenses, inspections, and services; and (c) pay all applicable Taxes imposed by the City and Fees. Summer Rocks shall effect such

guarantee with respect to Talent business licenses, earnings tax, and payroll expense tax as follows:

(a) **Out-of-State Talent.** As to any Talent based outside the State, Summer Rocks shall obtain or cause to be obtained a business license for each Talent entity or individual person, as applicable, pursuant to Chapter 8.07 of the Code. Further, Summer Rocks shall withhold (i) 1% of the Festival compensation due to each Talent individual and (ii) 1% of the Festival compensation of each individual employed by a Talent business entity for payment of the individual 1% City Earnings Tax pursuant to Chapter 5.22 of the Code and shall tender such withheld amount to the Collector of Revenue and shall remit such tax to such Collector of Revenue in accordance with such Chapter and regulations established by the Collector of Revenue. Further, if such Talent is a business entity rather than an individual, Summer Rocks shall (i) withhold an additional 0.5% of such compensation for payment of the City's Payroll Expense Tax pursuant to Chapter 5.23 of the Code and shall remit such tax to the Collector of Revenue in accordance with such Chapter and regulations established by such Collector; and (ii) advise such Talent entity that the entity is responsible for paying, in addition to the individual earnings tax, a corporate earnings tax pursuant to Chapter 5.22 of the Code. Summer Rocks agrees not to directly or indirectly (a) credit or allocate Talent compensation which should be equitably accredited or allocated to a Festival to an event, festival, or activity taking place outside the City; or (b) credit or allocate revenue to an affiliate of any Talent which should be equitably credited or allocated to that Talent as compensation for performing at a Festival. Notwithstanding the first and second sentences in this subsection, Summer Rocks may elect to use other methods to ensure that Talent based outside the State pay for and obtain business licenses and pay all applicable earnings and payroll taxes provided that such methods result in such licenses being obtained and such taxes being paid.

(b) **In-State Talent.** Second, as to any Talent based inside the State, Summer Rocks shall provide the Liaison with a list of such Talent's names and contact information and shall advise such Talent of its obligation to obtain a business license pursuant to Chapter 8.07 and its obligation to pay City Earnings and Payroll Expense Taxes pursuant to Chapters 5.22 and 5.23 of the Code.

Summer Rocks shall seek no waiver of any required permit, license, inspection, or service or fee associated therewith, no waiver of any Tax or Fee, and no economic incentives for the Production of any Festival.

6.6 **Compliance with All Applicable Laws.** Summer Rocks shall Produce each Festival in accordance with all Applicable Laws. In addition, Summer Rocks shall carry out the Production of each Festival in a professional and workmanlike manner, using commercially reasonable methods of the respective trades or professions, and shall further ensure that its Subcontractors and Affiliates comply with all Applicable Laws and carry out the aspects of each Festival for which they are responsible in a professional and workmanlike manner, using commercially reasonable methods of the respective trades or professions.

6.7 **Use of Minority and Women's Business Enterprises**. Summer Rocks and its Affiliates will comply, and will use commercially reasonable efforts to ensure that each of their Subcontractors and Affiliates comply, with the MBE/WBE policy attached hereto as **Exhibit B**.

6.8 **Use of Minority, Women, and City Resident Labor.** Summer Rocks will use commercially reasonable efforts, and will use commercially reasonable efforts to ensure that each of its Subcontractors and Affiliates uses their commercially reasonable efforts, to achieve the goals for minority, women, and City resident employment set forth in Sections Four and Five of City Ordinance 69427, attached hereto as **Exhibit C**, with respect to all persons, exclusive of Talent, engaged by Summer Rocks, any Affiliates of Summer Rocks, and any Subcontractors to perform work in the City for any Festival, notwithstanding the fact that such Festival is not a City Public Works Contract for which a design team's estimated base value is $1 million or more, a Tax Increment Financed (TIF) Project, or a St. Louis City Bonded Project within the meaning of that ordinance.

6.9 **Use of Organized Labor.** Where Unionized Persons having the requisite trade skills are available in the St. Louis labor market, Summer Rocks shall use commercially reasonable efforts, and shall use commercially reasonable efforts to ensure that its Affiliates, and its Subcontractors shall exclusively use Unionized Persons to perform all work in the City required to Produce each Festival. The foregoing requirement shall not apply to Talent.

6.10 **Diversity of Talent.** Summer Rocks shall use commercially reasonable efforts to cause the Talent performing at each Festival to be diverse.

6.11 **Public Health and Safety.** Summer Rocks shall provide and pay for all necessary or desirable ancillary facilities, personnel, and services for the Festival Area, including but not limited to sanitation facilities and services, security services, and other public safety services required by the Liaison to ensure that operation of each Festival is healthy and safe and protect the health and safety of Festival attendees and workers and the general public throughout each of the Festival Periods in the Festival Area. Further, Summer Rocks shall (a) design, install, and carry out each element of each Festival in a manner that ensures that no element of any Festival can reasonably be considered to pose a physical danger to persons or property.

6.12 **Barricade Design.** Summer Rocks shall provide high quality, well-designed Festival Enclosures in conformity with a design and materials approved or specified by the Liaison. Summer Rocks understands and agrees that standard "bicycle rack" barricades are not high-quality or well-designed and are not acceptable to the City as Festival Enclosures.

6.13 **Sanitation.** Summer Rocks shall provide toilet, hand washing, and trash collection and removal facilities and services appropriate for the anticipated number of persons attending and working at each Festival throughout each of the Festival Periods.

6.14 **Traffic Management; Evacuation and Disaster Management Plan.** Summer Rocks shall engage a traffic management company acceptable to the Chief of the St. Louis Metropolitan Police Department to provide traffic management of types and in locations specified by such Chief or his or her designee on streets affected by preparation for, conduct of, or Production of each Festival throughout each of the Festival Periods. Summer Rocks shall

prepare a traffic management plan, an evacuation plan, and a disaster management plan acceptable to the City and comply with such plans and pay for the implementation thereof.

6.15 Noise. Summer Rocks is not required to comply with the Noise Ordinance during the hours of operation in a Festival Performance Period mutually agreed to in writing by the Liaison and a Representative.

6.16 Sponsors. Recognizing that the City fosters a wide variety of events and activities that benefit from the contributions of sponsors and that the number and capacity of prospective sponsors for other city events in the St. Louis community is limited, Summer Rocks and the Liaison, on behalf of the City, will enter into a separate agreement governing the solicitation of Sponsors for Festivals (the "**Sponsor Agreement**").

6.17 Local Vendors and Food Trucks. To the maximum commercially feasible extent and provided that such operators and vendors are otherwise properly permitted and licensed with the City, Summer Rocks shall (a) incorporate a commercially reasonable number of City-based food and beverage vendors and other vendors compatible with Festivals for their operation within the Festival Performance Area; and (b) approve permits for a commercially reasonable number of City-based Food Truck operators compatible with Festivals for their operation outside the Festival Performance Area but within the Festival Zone during each Festival Performance Period, provided that in each case such vendors and Food Trucks are compatible with the particular Festival and are not competitors of the particular Festival's Sponsors.

6.18 Coordination with Other Events. Summer Rocks shall cooperate with the Liaison in ensuring that Memorial Day and Labor Day parades can take place in locations reasonably acceptable to organizations conducting such events.

6.19 Sustainability. Recognizing that the City is committed to ensuring that activities on City properties are conducted in an environmentally sustainable manner, Summer Rocks shall develop a recycling plan and submit such plan to the Liaison no later than ninety (90) days prior to the commencement of each Festival and shall accept and adopt commercially reasonable suggestions from the Liaison for improvements to such recycling plan, from time to time.

6.20 Construction in or Adjacent to Festival Performance Area and Festival Loading Areas. Notwithstanding anything to the contrary in this Agreement, the City reserves the right, from time to time, to construct improvements adjacent to and/or within the Festival Areas. Summer Rocks shall cooperate with the City and modify the Festival Areas during construction of any such improvements as the City may reasonably request. In the event of any such construction, Summer Rocks shall not be entitled to, and hereby waives any rights it may have under Applicable Law to, be compensated for any loss of use of the Festival Areas resulting from such construction. The Festival Areas shall be made available to Summer Rocks in their as is condition with all faults. If Summer Rocks reasonably determines that construction materially affects Summer Rocks' ability to use the Festival Areas for one or more Festival Weekends, Summer Rocks may terminate this Agreement or tender a Nonproduction Notice(s) as to the affected Festival Weekend(s), but shall have no obligation to pay the City pursuant to **Section 6.2(d)**.

6.21 <u>Control over Talent and Performances</u>. Summer Rocks shall be responsible for ensuring that no Talent or Performance can reasonably be considered to pose a physical danger to persons or property. The City acknowledges and agrees that such Talent and Performances may stimulate debate and commentary, may evoke emotion, and may be controversial, and that such debate, commentary, emotion and controversy are fundamental to the nature of musical art. Notwithstanding the foregoing, prior to any final decision by Summer Rocks with respect to the selection of Talent and Performances for each Festival, Summer Rocks shall confer with the Liaison with respect to such selection of Talent and Performances. If the Liaison reasonably believes that any Talent or Performance proposed for a Festival poses a physical danger to Persons or property or creates a dangerous distraction or obstruction to drivers on adjacent streets, then the Liaison shall bring his or her concerns to the attention of Summer Rocks in a timely manner and the Liaison and Summer Rocks shall work cooperatively to resolve the concerns prior to the particular Festival.

6.22 Indemnification. To the fullest extent permitted by law and notwithstanding the insurance to be provided by Summer Rocks pursuant to this Agreement, Summer Rocks hereby agrees to protect, indemnify, defend (by counsel reasonably acceptable to the City and Summer Rocks) and save harmless the City, its agencies, and its departments and all commissioners, directors, officers, agents, employees and contractors (collectively, the "**City Indemnitees**") thereof from and against any and all liability, loss, injury, claim, cause of action, judgment, damage, settlement, fine and expense (including, without limitation, reasonable attorneys' fees (which shall include, without limitation, the reasonable fees of attorneys employed by the City counselor's office and approved in advance by Summer Rocks)), expert witness fees, court costs and all litigation expenses) (collectively, "Liabilities") resulting from or arising out of any one or more of the following:

(a) Any property damage, bodily injury, death or sickness caused in whole or in part by any event or occurrence during any Festival Period and within the Festival Areas (at, above or below grade level), regardless of whether such event or occurrence was caused by (i) any condition of the Festival Areas, or any improvements therein, regardless of whom may have caused such condition; (ii) any negligent, intentional or criminal conduct of any person not a party to this Agreement; (iii) any breach of this Agreement, negligence or intentional conduct on the part of any one or more of Summer Rocks, any Affiliate of Summer Rocks or any of their respective managers, members, officers, directors, shareholders, agents, employees, contractors, subcontractors (at any tier), vendors or customers (collectively, the "Summer Rocks Parties"); and (iv) any negligence on the part of the City or any City Indemnitee. The obligation of Summer Rocks to indemnify the City Indemnitees, in clause (iv) of the immediately preceding sentence, expresses an unequivocal intention on the part of Summer Rocks to indemnify the City and each City Indemnitee against their own negligence with respect to any events or occurrences occurring within the Festival Areas during any Festival Period. Notwithstanding anything to the contrary in the foregoing, however, Summer Rocks shall have no obligation to protect, indemnify, defend or save harmless any City Indemnitee from any property damage, personal injury, death or sickness to the extent caused by such City Indemnitee's gross negligence or willful misconduct.

(b) Any property damage, bodily injury, death or sickness to the extent caused by the negligence, willful misconduct or breach of this Agreement by any one or more of the Summer Rocks Parties regardless of whether the same occurs during any Festival Period or within the Festival Areas.

(c) Any Event of Default on the part of Summer Rocks under this Agreement.

(d) Any misrepresentation, breach of warranty or other default on the part of Summer Rocks under this Agreement or any other agreement or document to which Summer Rocks or any Affiliate or Subcontractor of Summer Rocks is a party.

(e) Any litigation in which the City or any official thereof is named as a party connected in any way, directly or indirectly, with any Festival, any portion of any Festival, or the Production thereof.

If a claim is asserted against any one or more of the City Indemnitees for which the City Indemnitees seek to be indemnified by Summer Rocks as provided above, such City Indemnitee shall give Summer Rocks written notice thereof (a "**Claim Notice**") reasonably prompt after the City Counselor is made aware of such claim. Upon the receipt of any such Claim Notice, Summer Rocks shall give the City and any other notifying parties written notice, within thirty (30) business days of the receipt of such Claim Notice, as to whether Summer Rocks will completely indemnify the City Indemnitees from all Liabilities resulting from such claim referenced in such Claim Notice. If Summer Rocks fails to respond within such time period, Summer Rocks shall be deemed to have refused to provide the indemnity described above with respect to the claim described in the Claim Notice.

If (i) a claim is asserted against any one or more of the City Indemnitees for which the City Indemnitees seek to be indemnified by Summer Rocks as provided above (whether by means of giving a Claim Notice or otherwise), and (ii) Summer Rocks alleges that such claim, or any portion thereof, is not or may not be entirely covered by the above indemnity or fails to timely respond to a Claim Notice, then (A) the City Indemnitees shall have the right to engage their own attorneys, expert witnesses and other consultants to represent themselves in connection with any such claim, and (B) if such claim is determined (by means of a final nonappealable judgment in a court of competent jurisdiction) to be covered by the above indemnity, then Summer Rocks shall reimburse the City Indemnitees for all Liabilities suffered or incurred by the City Indemnitees in connection with such claim.

Notwithstanding anything to the contrary in the foregoing, if any claim indemnified above is covered by insurance procured and paid for by Summer Rocks, then the parties agree that the performance by the insurance company pursuant to any policy of insurance shall be deemed to satisfy the obligations of the Summer Rocks as aforesaid only to the extent of such performance by the insurance company; and Summer Rocks shall be responsible for any Liabilities in excess of the amount satisfied by insurance as and when such Liabilities become due and payable by the City Indemnitees.

6.23 **Minimum Net Worth.** Throughout the Term, Summer Rocks shall maintain at all times an irrevocable letter of credit (a "Letter of Credit") or cash equivalent acceptable to the

Liaison in the amount of Two Million Dollars ($2,000,000), and shall provide evidence of such Letter of Credit or cash equivalent to the Liaison (i) no later than thirty (30) days after Summer Rocks submits the Festival Plan for the first Festival Produced by Summer Rocks, (ii) no later than thirty (30) days prior to the expiration of any previous Letter of Credit, and (iii) no later than ten (10) days after the Liaison requests evidence that such Letter of Credit is irrevocable and effective. The Liaison may reasonably request such evidence at any time during the Term of this Agreement.

6.24 Insurance.

(a) Insurance Consultant. Summer Rocks shall identify for the Liaison's consideration one or more Insurance Consultants experienced in establishing insurance requirements for large, multi-day, high-quality outdoor music festivals. The Liaison may also research and identify one or more such Insurance Consultants. The Liaison, after consultation with City officials involved and experienced in insurance matters, shall select and negotiate an agreement with one Insurance Consultant. The agreement shall provide that (a) Summer Rocks shall pay the Insurance Consultant's fees but the Insurance Consultant's exclusive client is the City; (b) the Insurance Consultant shall recommend to the City types and amounts of insurance coverage necessary or desirable to protect the City from any liability associated with large, multi-day, high-quality outdoor music festivals; and (c) the Insurance Consultant shall review the certificates of coverage provided by Summer Rocks in advance of each Festival for conformance with the insurance requirements established by the Insurance Consultant and this **Section 6.24**.

(b) Commercial General Liability Insurance. Summer Rocks shall purchase, obtain and maintain for the Term a commercial general liability insurance ("CGL") policy which protects against and pays for claims for personal and bodily injury, property damage, fire damage, medical expenses, vehicular liability, advertising and copyright liability, and provides umbrella coverage, and such other types of coverage and policies as the Insurance Consultant shall recommend, covering any claim related to any aspect of Producing any Festival, all in such amounts and with such limits as the Insurance Consultant shall recommend. The City, its officers, and employees (and, to the extent possible, the other City Indemnitees) shall be included as "additional insureds" on a primary, noncontributory basis under such CGL policies and other policies recommended by the Insurance Consultant.

(c) Workers Compensation Insurance. Summer Rocks shall purchase, obtain and maintain for the for the Term of this Agreement insurance sufficient to discharge its obligations under all applicable workers compensation laws in the state that work is to be performed, including any of the federal or maritime laws, as recommended by the Insurance Consultant and such other worker-related insurance as the Insurance Consultant shall recommend, all in such amounts and with such limits as the Insurance Consultant shall recommend. The City, its officers, and employees (and, to the extent possible, the other City Indemnitees) shall be included as "additional insureds" on a primary, noncontributory basis under such policy and other policies recommended by the Insurance Consultant.

(d) **Subcontractor and Affiliate Insurance.** Summer Rocks shall cause each of its Subcontractors and Affiliates to purchase, obtain, and maintain insurance which protects against and pays for claims for personal and bodily injury, property damage, fire damage, medical expense, vehicular liability, and provides umbrella coverage and such other types of coverage and policies as the Insurance Consultant shall recommend, all in such amounts and with such limits as the Insurance Consultant shall recommend, for the duration of each Festival Periods or, if any such Subcontractor or Affiliate is performing work related to any Festival before or after the Festival Periods for that Festival, for the period beginning when such work commences and ending when such work is complete. The City, its officers, and employees (and, to the extent possible, the other City Indemnitees) shall be included as "additional insureds" on a primary, noncontributory basis under such policies and other policies recommended by the Insurance Consultant.

(e) **Other Insurance.** Summer Rocks shall provide such other insurance of such types, with such limits, and in such amounts as are reasonably recommended by the Insurance Consultant

(f) **Evidence of Insurance.** Summer Rocks shall, no later than sixty (60) days prior to commencement of each Festival, furnish the City, through the Liaison, with standard original certificates of insurance for Summer Rocks and each of its Affiliates and Subcontractors as evidence and confirmation of all insurance required by this Section. All certificates shall provide for thirty (30) days written notice to the City prior to the cancellation, expiration or reduction of the limits of any insurance referred to therein. The City, its officers, and employees (and, to the extent possible, the other City Indemnitees) shall be named as "additional insureds" on a primary, noncontributory basis on all policies of insurance required by this **Section 6.24**. Summer Rocks shall ensure that all insurance required by this **Section 6.24** shall be issued by an insurer having an A.M. Best rating of A-, IX or higher and full authorization to conduct business in the State. If the Insurance Consultant reviews any certificate of insurance required to be provided by this **Section 6.24** and determines it to be defective, Summer Rocks shall cause such defect or defects to be corrected and a replacement certificate of insurance without defects to be provided to the Liaison no later than two (2) weeks before the first day of the applicable Festival Performance Period.

(g) **Adjustment of Required Insurance Amounts.** From time to time, but not more frequently than once every five (5) years, the amounts and/or types of insurance required to be maintained by Summer Rocks, its Affiliates, and its Subcontractors shall be reviewed by the Insurance Consultant or a replacement Insurance Consultant upon the written request of the City's Comptroller or Summer Rocks to determine whether the amounts and/or types of coverage then required are consistent with those maintained by other parties engaged in similar activities in similar locations. Thereafter, the amounts and/or types of required coverage shall be reasonably adjusted as agreed to in writing by the parties, and Summer Rocks shall cause the adjusted types of coverage to be provided for all Festivals thereafter in such adjusted amounts.

6.25 Prohibited Actions, Activities, and Practices. Summer Rocks shall not knowingly suffer or knowingly permit any one or more of the following actions, activities, or practices occur during or in connection with the Production of any Festival:

(a) Tax Delinquencies. Employment of or contracts with any tax delinquent Subcontractor or Talent.

(b) Firearms. Use or possession of any firearms or other weapons within the Festival Areas, unless in the possession of police officers or qualified and licensed security personnel approved by the St. Louis Metropolitan Police Department.

(c) Danger to Public Health and Safety. Endangerment of any type to public health or safety of any type.

(d) Conflicts of Interest. Violation of any Applicable Law, ordinance or regulation relating to conflicts of interest. Without limitation of the foregoing sentence, no member of the Board or officer or employee of or consultant to any branch of government of the City who has any power of review or approval of any of the undertakings contemplated herein shall have any personal interest, directly or through any corporation or partnership in which he is directly or indirectly interested, in any Subcontract related in any way to any Festival. Neither Summer Rocks nor any Affiliate or Subcontractor of Summer Rocks shall knowingly employ or contract with any Person if a member of his or her immediate family is a member of E&A or the Board or is employed by the City in any capacity with selection, hiring, or supervisory or operational responsibility for any Festival or any aspect thereof. For purposes of this Agreement, "immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, aunt, uncle, niece, nephew, step-parent, and step-child.

(e) Liens. Imposition of any mortgage, pledge, lien charge, encumbrance or claim on or with respect to the Festival Areas or any part thereof. If the City first complies with Section 10.6(b), Summer Rocks shall reimburse the City for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

6.26 "As Is" Condition. The Festival Areas shall be made available to Summer Rocks during each Festival Period, in their "as is" condition with all faults, at such time. Notwithstanding anything to the contrary in this Agreement, the City shall have no express or implied obligation to cause the Festival Areas to be in any particular state of condition or repair and any and all express or implied covenants or warranties to such effect are hereby disclaimed by the City. Summer Rocks hereby waives and releases any and all claims or causes of action which Summer Rocks has or may ever acquire against the City or any of the City Indemnitees as a result of the condition of the Festival Areas for any given Festival Weekend. Without limiting the generality of the foregoing, the parties acknowledge that there are or may be underground or subsurface conditions at or affecting the Festival Areas, which could cause a subsidence, collapse or depression of the Festival Area grounds. Summer Rocks shall bear all risk of loss with respect to any such subsidence, collapse or depression of the land within the Festival Area to the extent caused by the weight of the facilities, improvements or equipment installed by or on behalf of Summer Rocks, and/or the weight of the people attending or working at any Festival.

Summer Rocks shall (i) perform such due diligence as is reasonably required with respect to the underground or subsurface conditions at or affecting the Festival Area and (ii) at the sole expense of Summer Rocks, shall take such precautions as are necessary to avoid any damage or injury to persons or property as a result of any such underground or subsurface conditions. If and to the extent the "as is" condition of the Festival Area materially frustrates Summer Rocks' ability to Produce a Festival, Summer Rocks shall notify the Liaison in writing and, thereafter, the City shall treat such notification as an Effective Nonproduction Notice, without regard to when such notification is tendered.

ARTICLE VII - CITY OBLIGATIONS AND COVENANTS

7.1 **Issuance of Permits and Licenses to Summer Rocks**. Unless Summer Rocks has cancelled a particular Festival pursuant to **Section 0** and provided that Summer Rocks complies with all permit, license, and other requirements (including but not limited to the payment of customary Fees and Taxes and compliance with requirements established by a City department) and the other requirements of this Agreement in a timely manner with respect to any Festival Weekend, those departments and agencies of the City which are under the control of the Mayor shall issue all City permits and City licenses and perform all inspections required for the Production of the applicable Festival in the Festival Areas during the applicable Festival Periods. Such permits, licenses, and inspections shall include but not be limited to permits for park use and street closings for the applicable Festival Areas for the duration of the applicable Festival Periods, health department permits associated with food and beverage sales during a Festival, liquor licenses for alcoholic beverage sales during a Festival, safety inspections and any other permits, licenses, and inspections required by any Applicable Law pursuant to which a City department or agency under the control of the Mayor has the authority to grant or make such permit, license, or inspection. Summer Rocks agrees that if Summer Rocks has not timely complied with the requirements of this Agreement for a particular Festival or the requirements for a particular permit, license, or inspection, the City may, at its option and in its discretion, refuse to issue permits and licenses for that Festival; provided, however, that the City and its agencies and departments shall not impose requirements that are unreasonable.

7.2 **Other Festival Area and Festival Zone Permits.** Unless Summer Rocks has cancelled a particular Festival pursuant to **Section 0**, City departments and agencies under the control of the Mayor shall not issue any non-Summer Rocks permits or licenses within the Festival Areas or the Festival Zone during any Festival Periods without the Representative's approval.

7.3 **Coordination.** The City, through the Liaison, shall endeavor to coordinate the activities of all City departments and agencies under the control of the Mayor to ensure that such departments and agencies act efficiently and timely towards the goal of successful Festivals. The Liaison shall also endeavor to serve as Summer Rocks' ombudsman with non-Mayoral City departments and agencies and shall assist Summer Rocks in obtaining State and non-City department and agency permits, licenses, and inspections required to Produce each Festival.

7.4 **Non-Compete.** To the extent the City may so agree under Applicable Law, the City agrees not to issue permits for the conduct of for-profit music events substantially similar to

a Festival in the City during the Term. Notwithstanding the preceding sentence, if Summer Rocks gives a Nonproduction Notice or partially terminates this Agreement (as provided in **Section 4.1** above), the City may issue permits for other similar for-profit events during any such Festival Weekend. Further, notwithstanding anything to the contrary in this Agreement, the City shall have the right to permit the LouFest, Rock-A-Thon, the VP Fair/Fair St. Louis, Big Muddy Blues Festival, Live on the Levee, and other musical events being conducted on an annual basis within the City as of the Effective Date (or any replacements of or successors to any one or more of such events), without being deemed in breach of any express or implied agreement on the part of the City herein; provided, however, that the City shall not, during the Term, permit such events to take place in the Festival Areas during the Festival Weekends without Summer Rocks' consent, unless Summer Rocks has provided a Nonproduction Notice pursuant to **Section 6.1** or partially terminates this Agreement pursuant to **Section 4.1**. The parties hereto stipulate that the specific events listed in the preceding sentence are not "music events substantially similar to a Festival."

As long as Summer Rocks has not terminated a Festival Weekend pursuant to **Section 4.1**, Summer Rocks hereby agrees it shall not Produce a substantially similar Festival within three hundred (300) miles of the City during the applicable Festival Weekend; provided, however, in the event a Festival Weekend is terminated pursuant to **Section 4.1**, this **Section 7.4(b)** shall not restrict Summer Rocks from Producing a substantially similar Festival on such Festival Weekend.

ARTICLE VIII - FESTIVAL PLAN

8.1 **Festival Plan.** No later than one hundred twenty (120) days before the beginning of each Festival Performance Period, Summer Rocks shall submit to the Liaison a plan for that Festival (a "**Festival Plan**"). Each Festival Plan shall include the following:

(a) **Tickets.** Number of Tickets to be made available to the public, the categories of such Tickets, and the prices to be charged for such Tickets.

(b) **Complimentary Tickets.** Total number of Tickets anticipated to be made available free of charge to Talent and/or Equity Investors.

(c) **Comped Tickets.** Total number of Comped Tickets anticipated to be made available.

(d) **Talent.** List of Talent booked or anticipated to be booked, indicating the commitment status and the Performances such Talent will deliver, as shall be reasonably ascertainable.

(e) **Sponsors.** List of Sponsors to be solicited for that Festival.

(f) **Marketing.** Description of the manner in which the Festival will be marketed and the target audiences for the marketing effort.

(g) **Layout and Safety Plan.** Drawings showing the proposed layout of all physical elements proposed to be erected or provided for that Festival, together with a detailed description of the plan for the protection of persons and property during such Festival, including but not limited to the following, together with design drawings and specifications for elements that will be specially constructed or fabricated for the Festival and specification sheets for elements that will be furnished ready-made:

i. **Festival Enclosures.** Design and locations of all Festival Enclosures.

ii. **Signage.** Types and locations of all signage to be erected in conjunction with the Festival, which signage must be located within the Festival Areas, with the understanding that appropriate City Department of Public Safety permits and City Board of Adjustment variances may be required for such signage.

iii. **Stages.** Locations, dimensions, and approximate weights of one (1) main stage and two (2) side stages, together with a structural report with respect to any stage that will be constructed on any street surface, with the understanding that Department of Public Safety permits are required for such stages and each stage must pass City inspections and tests prior to use of such stage at a Festival.

iv. **Other Structures.** Design, locations, dimensions, materials (all of which must be fire retardant), and approximate weights of any other structures to be temporarily erected in conjunction with the Festival, with the understanding that City Department of Public Safety permits are required for such structures and each structure must pass City inspections and tests prior to use of such structure at a Festival..

v. **Food and Beverage Services.** Locations and types of food and beverage services, identifying alcoholic beverage services and stating the type of alcoholic beverages to be served.

vi. **Fire Extinguishers.** Locations of fire extinguishers.

vii. **Safety Hazards.** Locations proposed for any fireworks displays, amusement rides, or other elements which pose special health and safety hazards (all of which require special permits and for which the City may impose special requirements and/or restrictions).

viii. **Access and Circulation Routes.** Locations where patrons will enter and exit the Festival, together with locations and sizes of areas designated for circulation within the Festival Performance

Area, which areas must comply with City Fire Department requirements.

ix. **Sanitation Facilities and Services.** Drawings and specification sheets showing the types and locations of all sanitation facilities, which shall include toilet, hand washing, and drinking fountain facilities and services (all of which require City Health Department permits or approvals) and trash collection and removal facilities and services, together with the names of proposed sanitation contractors.

x. **Parking Meters.** The number and locations of any parking meters to which access will be restricted during any Festival Periods (for which payment to the City Treasurer will be required).

xi. **Fire Protection and Emergency Medical Facilities and Services.** Drawings showing the types and locations of fire protection and emergency medical services personnel and facilities proposed for the Festival, indicating which fire protection and emergency medical facilities and personnel are proposed to be provided by the City and which are proposed to be provided by private contractors retained and compensated by Summer Rocks, together with the names of any proposed private contractors.

xii. **Traffic Management Plan.** Drawings showing the proposed types and locations of traffic management devices and personnel.

xiii. **Evacuation Plan.** Drawings showing proposed evacuation routes and a narrative setting forth the manner in which evacuation will be accomplished in either (a) the event of a danger to public safety; or (b) at the conclusion of Performances during the Festival.

xiv. **Disaster Management Plan.** Drawings and/or narrative demonstrating how Summer Rocks will manage any disaster.

(h) **Security Services.** Analysis of the security needs for the Festival, and plan describing the number, type, and proposed geographic deployment of security personnel and indicating which security personnel are proposed to be provided by the City and which are proposed to be private contractors retained and compensated by Summer Rocks and providing the names of any proposed private security contractors. The security plan shall include "pat-downs" of all Persons attending the Festival before entrance to the Festival Performance Area is permitted and refusal of admittance if firearms or other weapons are found.

(i) **Utilities.** Description of the quantities, types, and durations of electrical, water, and other utilities expected to be needed for the Festival (including a statement as to whether the use of fire hydrants for water is planned, in which case one or more fire hydrant use permit are required).

(j) **Temporary Modifications of City Facilities.** List of City facilities for which Summer Rocks requests temporary modifications and the types of modifications requested (e.g., temporary removal of traffic lights).

(k) **Food and Beverage Services.** List of local restaurants and other vendors who will provide food and beverage services within the Festival Performance Area and within the Festival Zone, with drawing showing locations of such vendors and, if any vendor will engage in on site food preparation, the proposed fuel source for such preparation. Summer Rocks and each such vendor must possess or obtain the food and beverage permits required pursuant to City Ordinance # 68597.

(l) **Liquor Service.** List of local restaurants and other vendors who will serve alcoholic beverages at the Festival and the types of liquor licenses or permits for the Festival for which they will apply.

(m) **Sustainability.** Description of the ways in which Summer Rocks, its Affiliates, and its Subcontractors will recycle in Producing the Festival and will encourage recycling at the Festival by Persons attending the Festival.

(n) **Affiliates.** The names, state of incorporation, managers, roles of, and contact information for any Affiliates of Summer Rocks who will participate in Producing the Festival.

(o) **Subcontractors.** List of all Subcontractors proposed for retention by Summer Rocks and any of its Affiliates for the Festival, including the following information:

i. Subcontractor's name and address.

ii. Purpose of the subcontract.

iii. Anticipated dollar amount of subcontract.

iv. Whether the Subcontractor is an MBE and/or a WBE.

v. Whether the Subcontractor employs Unionized Persons.

vi. The total number of employees the Subcontractor expects to employ in connection with the Festival and which employees will be minorities, women, and/or City residents.

(p) **Special Event Permit Consolidated Application Form.** A Special Event Permit Consolidated Application Form together with all required attachments in the form attached hereto as **Exhibit E**, as such form and required attachments may be subsequently modified by the City from time to time.

8.2 **Consultation with the City.** In consultation with all affected City departments, the Liaison shall review the Festival Plan for compliance with the Summer Rocks obligations set forth in this Agreement and the requirements for applicable permits and licenses and shall,

within thirty (30) days following the Liaison's receipt of the Festival Plan, submit (i) reasonable suggestions, if any, for improving the Festival Plan, (ii) a list of obligations and requirements that the Festival Plan fails to reasonably fulfill, if any, and (iii) other reasonable objections, if any, to one or more portions of the Festival Plan. Summer Rocks shall accept commercially reasonable suggestions from the Liaison for improvements to the Festival Plan, shall work with the Liaison to resolve any reasonable objections to the Festival Plan to the mutual satisfaction of Summer Rocks and the Liaison, and shall revise the Festival Plan as required to reasonably comply with all obligations and requirements set forth in this Agreement such that a final Festival Plan reasonably acceptable to the Liaison and to Summer Rocks shall be completed no later than seventy-five (75) days prior to the Festival. Notwithstanding anything in this Section or this Agreement to the contrary, Summer Rocks shall comply with the City's reasonable requirements for security at each Festival, communicated by the Liaison with reference to each Festival and subject to change with respect to each Festival.

ARTICLE IX - REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties of Summer Rocks. Summer Rocks represents, warrants and covenants that:

(a) Summer Rocks is a limited liability company, duly created and existing under the laws of the State of Delaware, and is authorized to do business in the State.

(b) Summer Rocks has full power and authority to enter into this Agreement and to carry out its obligations under this Agreement, and, by proper actions of its members, has been duly authorized to execute and deliver this Agreement.

(c) This Agreement is the valid and binding obligation of Summer Rocks, enforceable against Summer Rocks in accordance with its terms.

(d) There is no litigation or other proceeding pending or threatened against Summer Rocks affecting the right of Summer Rocks to execute or deliver this Agreement or the ability of Summer Rocks to comply with its obligations under this Agreement.

9.2 Representations and Warranties of the City. The City represents, warrants and covenants that:

(a) The City is a public body corporate and politic duly organized under the laws of the State and charter and ordinances of the City.

(b) The City has the authority to enter into this Agreement.

(c) This Agreement is the valid and binding obligation of the City, enforceable against the City in accordance with its terms.

ARTICLE X - OTHER AGREEMENTS

10.1 Naming Rights. Summer Rocks has exclusive rights to name the Festivals and to trademark such name; provided, however, that such name shall be reasonably acceptable to the Liaison. The City and its departments and agencies have the right to use such name in advertising, promoting, and marketing the Festivals and the City but have no right to sub-license or otherwise grant the use of such name to any others except the St. Louis Convention and Visitors Commission, the Partnership for Downtown St. Louis, and the Missouri Division of Tourism.

10.2 Photography. Summer Rocks shall retain all of its rights of reproduction with respect to each Festival. If the City wishes to obtain photographs of any Festival for publicity or publication or wishes to reproduce any images of any Festival for publicity or publication, then the City must obtain the prior written consent of Summer Rocks; provided, however, that such consent shall not be unreasonably withheld and that such prior written consent requirement shall not apply to photographs of a Festival in whole or in part, provided that such photographs do not have as their sole subject particular Talent. Notwithstanding the preceding two sentences, Summer Rocks understands and agrees that the City cannot and will not prevent other Persons from taking and using any photographs of any Festival or portion thereof.

10.3 Assignment and Delegation.

(a) No Assignments. Neither party may assign any of its rights under this Agreement without the prior written consent of the other party.

(b) No Delegations. Neither party may delegate any of its obligations under this Agreement, voluntarily or involuntarily, including, with respect to Summer Rocks, by Change of Control , merger (whether or not such party is the surviving corporation), by operation of law, in or any other manner, without the prior written consent of the other party. No delegation shall relieve the delegating party of any of its obligations under this Agreement.

(c) Exceptions. Summer Rocks agrees (a) that the City's obligations pursuant to this Agreement may be delegated to the City's creditors but only to the extent that the City has pledged any portion of the Festival Areas to others to secure credit and the City defaults on the financing obligations associated with such pledge; and (b) the election of new officials by City voters, a reduction in the size of the Board of Aldermen, or the replacement of City elected and appointed officials and employees are not delegations or assignments prohibited by this **Section 0**.

(d) Effect of Purported Assignment or Delegation. Any purported assignment or delegation in violation of this **Section 0** is void.

10.4 Permitted Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

10.5 **<u>Attorneys and Insurance Consultant Fees</u>.** The City has agreed that Thompson Coburn shall represent the City and that Summer Rocks shall pay the legal fees of Thompson Coburn LLP for its representation of the City in negotiating and drafting this Agreement through the later of the date the Ordinance approving this Agreement is effective and this Agreement is executed and effective. Thereafter, Summer Rocks shall pay the legal fees of any attorneys of the City's choice (provided that such attorneys shall be reasonably acceptable to Summer Rocks) for their work in representing the City with respect to any third party challenge to this Agreement or any portion hereof; and shall also pay the legal fees of any attorneys of the City's choice with respect to any third party claim for damages related in any way to this Agreement; and with respect to any legal suit instituted by Summer Rocks against the City. In the event that the City institutes any legal suit, action or proceeding, including arbitration, against Summer Rocks to enforce the covenants contained in this Agreement, to obtain any other remedy in respect of any breach of this Agreement, or in any other way arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding, as determined by the court, shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable outside attorneys' fees and expenses and court costs.

Per **Section 0**, Summer Rocks shall pay the reasonable fee charged by the City's Insurance Consultant, and shall pay such fees within thirty (30) days after receipt of an invoice therefor.

10.6 **<u>Events of Default</u>.** If any one or more of the following events occur with respect to Summer Rocks, the same shall constitute an "**Event of Default**" on the part of Summer Rocks:

(a) Summer Rocks fails or refuses to pay any amount of money due to the City under this Agreement and Summer Rocks fails to cure such failure or refusal within thirty (30) days after Summer Rocks' receipt of written notice thereof from the City; provided, however, that in the event Summer Rocks fairly disputes (i.e., through a lawful proceeding) such payment of money to the City, then (i) the amount in dispute shall be placed in an escrow account until the dispute is resolved; (ii) the amount not in dispute shall be paid to the City; and (iii) such failure or refusal to pay the amount in dispute shall not be considered an Event of Default hereunder; or

(b) Summer Rocks fails or refuses to comply with any of the terms of this Agreement not specified in the other subsections of this **Section 10.6** and Summer Rocks fails to cure such failure or refusal within forty-five (45) days (or such longer period as the City may permit) after Summer Rocks' receipt of written notice thereof from the City; or

(c) Summer Rocks, or any manager or managing member thereof, (i) becomes insolvent or generally fails to pay, or admits in writing its inability or refusal to pay, debts as they become due; (ii) applies for, consents to, or acquiesces in the appointment of a trustee, receiver or other custodian for such Person or any property thereof, or makes a general assignment for the benefit of creditors; or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for any such Person or for a

substantial part of the property of thereof and is not discharged within 60 days; (iii) becomes the subject of any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law; (iv) becomes the subject of any dissolution or liquidation proceeding, if such case or proceeding remains undismissed for 60 days; or (v) takes any action to authorize, or in furtherance of, any of the foregoing; or

(d) A Change of Control occurs with respect to Summer Rocks; or

(e) Summer Rocks fails to fulfill or comply with any term, condition, covenant or obligation contained in the Sponsor Agreement.

If the City fails or refuses to comply with any of the terms of this Agreement and the City fails to cure such failure or refusal within thirty (30) days (or such longer period as may be reasonably required for the City to cure such failure or refusal) after the City's receipt of written notice thereof from Summer Rocks, such failure or refusal shall constitute an "Event of Default" on the part of the City.

10.7 Remedies. If an Event of Default on the part of either party occurs, the non-defaulting party shall have the right, but not the obligation, (i) to terminate this Agreement by giving written notice of such termination to the defaulting party (in which event this Agreement automatically shall terminate on the third day after such written notice is given) and/or (ii) to exercise any other rights or remedies available to the non-defaulting party at law or in equity. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

10.8 No Personal Liability of Individuals. No alderman, alderwoman, commissioner, director, officer, board member, employee, or other agent or representative of the City and no Designated Principal, other member or Affiliate of Summer Rocks, or Representative shall be personally liable with respect to any obligations set forth in this Agreement or in any other connection with this Agreement. Neither the City nor any official or employee thereof is obligated to defend any challenge to this Agreement or any portion hereof but shall assist Summer Rocks in defending such challenge should Summer Rocks choose to do so.

10.9 No Punitive, Special, Incidental, Indirect, or Consequential Damages. Under no circumstances shall either Summer Rocks or the City be liable to the other in connection with this Agreement under any theory of tort, contract, strict liability or other legal or equitable theory for any punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties regardless of whether or not any of the parties have been advised of the possibility of such damages.

ARTICLE XI - MISCELLANEOUS PROVISIONS

11.1 Notices.

(a) Any notice, report, demand, request or other instrument or communication authorized, required, or desired to be given under this Agreement shall be in writing and shall be

deemed given if addressed to the party intended to receive the same, at the address of such party set forth below, (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with **Section 0**):

If to Summer Rocks: K5P2, LLC
c/o DFC Group, Inc.
7777 Bonhomme—Suite 1210
Clayton, MO 63105
Telephone: 314.504.7834
Facsimile: 314.725.8855
E-Mail: stevenstogel@aol.com; kentuckycma@aol.com
and:

BOTFR, LLC
c/o ICM Partners
10250 Constellation Blvd
Los Angeles, CA 90067
Attn: Richard B. Levy, Esq.
Telephone: 310.550.4046
Facsimile: 310.248.4592
E-Mail: rlevy@icmpartners.com

If to the City: _____
_____
_____
Telephone: _____
Facsimile:
_____
E-Mail: _____

with a copy to: City Counselor
Room 314 City Hall
1200 Market Street
St. Louis, Missouri 63103
Telephone: 314.622.____

Facsimile: 314.622._____
E-Mail: _____

(b) Either party may change the individual or address to which any such notice, report, demand, request or other instrument or communications to such party is to be delivered or mailed, by giving written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

(c) The attorneys for the respective parties hereto have the authority to send any notice that may be sent by any party hereto.

11.2 Interpretation. For purposes of this Agreement, unless the context otherwise requires, (a) the singular includes the plural and vice versa, the whole includes the part and vice versa, and the masculine includes the feminine (and neuter) and vice versa; (b) the words "include," "includes," and "including" shall be deemed to be followed by the words "without limitation"; (c) the word "or" is not exclusive; and (d) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. "Will" and "shall" are mandatory words denoting an obligation to pay or perform. "May" is a permissive word denoting an option. A capitalized form of a defined verbs has the same meaning as the specifically defined verb. Unless the context otherwise requires, references herein: (i) to sections and exhibits mean the sections of and exhibits attached to this Agreement; and (ii) to a statute or ordinance means such statute or ordinance as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties jointly prepared this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any uncertainty or ambiguity will not be interpreted against any party but will be interpreted according to the application of the rules of interpretation for arm's length agreements. The exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

11.3 Headings. The headings in this Agreement are for reference only, shall not affect the interpretation of this Agreement, and have no legal effect.

11.4 Severability. If any term or provision of this Agreement or this entire Agreement is held to be invalid, illegal or unenforceable in any jurisdiction under present or future laws, (a) the City shall have no liability to Summer Rocks on account of such holding; (b) any such term or provision shall be fully severable; (c) invalidity, illegality or unenforceability of a term or provision shall not affect any other term or provision of this Agreement and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, provided that without the invalid, illegal or unenforceable provision such remaining terms or provisions can be effected and both parties may still effectively realize the complete benefit of the transaction contemplated hereby. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby can be consummated as originally contemplated to the greatest extent possible. The City has no obligation to defend any challenge to this Agreement or any portion hereof but shall assist Summer Rocks in defending such challenge should Summer Rocks choose to do so.

11.5 Exhibits. Each of the Exhibits attached hereto is hereby incorporated by reference into this Agreement.

11.6 Entire Agreement. This instrument (together with the Exhibits attached hereto) constitutes the entire agreement between Summer Rocks and the City concerning the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter between Summer Rocks and the City. The parties have made no representations, warranties, understandings, or agreements other than those expressly included in this Agreement.

11.7 Further Assurances. Each of the parties to this Agreement will execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements and other documents, and will take all such further action required by law or necessary in furtherance of the purposes and the intent of this Agreement. Each party will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the other party may reasonably request to accomplish the purposes of this Agreement and to satisfy the requesting party that the other party is capable of fulfilling or has fulfilled its obligations pursuant to this Agreement.

11.8 Amendments. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Summer Rocks and the City.

11.9 Nonwaiver. Failure of either party to insist on the strict performance of any provision of this Agreement shall not be construed or deemed to be a waiver of that provision or any other provision of this Agreement. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

11.11 Governing Law. This Agreement will be substantially performed in the State of Missouri. All matters arising out of or relating to this Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Missouri, without giving effect to any choice or conflict or choice of laws provision or rule, whether of the State of Missouri or any other jurisdiction, except to the extent preempted by Federal law.

11.12 Jurisdiction and Venue. Any legal suit, action or proceeding arising out of, based upon, or relating to this Agreement shall be instituted only in the federal courts of the United States of America for the Eastern District of Missouri, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice or other document by certified mail in accordance with **Section 0** to such party's address as set forth in or modified pursuant to such **Section 0** shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action, or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

11.13 Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement. A signed copy of this Agreement delivered by facsimile or e-mail shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.14 Force Majeure. No party shall be liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, tornado, windstorm or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "**Force Majeure Event**"). The party suffering a Force Majeure Event shall take all commercially reasonable actions to mitigate any unforeseen events and give notice within five (5) days of the Force Majeure Event to the other party stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Notwithstanding the other parts of this Section or anything in this Agreement to the contrary, if an event that would otherwise be a Force Majeure Event pursuant to this paragraph is caused directly or indirectly by a Festival, such event shall not be a Force Majeure Event for purposes of this Agreement.

11.15 Relationship of the Parties. Nothing herein shall be construed to create a joint venture or partnership or an employee/employer relationship between the parties hereto. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any contract, agreement, or undertaking with any third party. Neither party is the agent of the other party. This Agreement shall not be construed to make the City or any officer or employee thereof liable to materialmen, contractors, craftsmen, laborers or others for goods or services

delivered by them in connection any Festival or for debts or claims accruing to said parties against Summer Rocks.

11.16 <u>Time of the Essence</u>. Time shall be of the essence in this Agreement.

11.17 <u>Computation of Time</u>. In computing any period of time, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is not a Business Day, and, if so, the period will run until the end of the next Business Day.

11.18 <u>Provisions Surviving Termination</u>. The following provisions of this Agreement and associated defined terms in Article I shall survive termination of this Agreement:

(a) Summer Rocks' obligation to pay fees and other amounts to the City for Festivals and Festival Weekends prior to termination pursuant to **Section 2.3** and **Section 6.2**;

(b) Summer Rocks' obligation to pay the City for services provided to each Festival produced prior to termination and the City's obligation to refund excess prepayments to Summer Rock pursuant to **Section 6.3** and **Section 6.4**;

(c) Summer Rocks' obligation to clean up and restore the Festival Areas as to Festivals prior to termination pursuant to **Section 6.4**, Summer Rocks' obligation to maintain insurance and cause its Subcontractors to maintain insurance with respect to such cleanup and restoration pursuant to **Section 6.24**, and Summer Rocks' obligation to prevent dangers to health and safety during such restoration and cleanup pursuant to **Section 6.11** and **Section 6.25(c)**;

(d) Summer Rocks' obligation to pay taxes with respect to Festivals prior to termination pursuant to **Section 6.5**;

(e) **Section 6.22**, Indemnification;

(f) Summer Rocks' obligation to avoid the imposition of liens against the City or on property comprising the Festival Areas pursuant to **Section 6.25(e)**;

(g) The representations and warranties of Summer Rocks and the City set forth in **Article IX**;

(h) The obligation of Summer Rocks to pay the City's legal fees and Insurance Consultant fees pursuant to **Section 10.5**;

(i) The provisions of **Section 10.7** relating to remedies;

(j) The provisions of **Section 10.8** pertaining to personal liability of individuals;

(k) The provisions of **Section 10.9** relating to available types of damages;

(l) The miscellaneous provisions set forth in **Article XI**; and

(m) Summer Rocks' obligation to pay liquidated damages pursuant to **Exhibit B** in the circumstances set forth in **Exhibit B**.

11.19 No Confidentiality. Summer Rocks acknowledges that the City is a body corporate and politic of the State of Missouri and as such is subject to Missouri's Sunshine Law. Summer Rocks has no right to assume that this Agreement or any communication with the City or any official or employee of the City is confidential.

STOP*[Signatures follow on the next page.]*

IN WITNESS WHEREOF, Summer Rocks and the City have hereunto set their hands and seals to this Agreement .

SUMMER ROCKS:

SUMMER ROCKS, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

THE CITY:

THE CITY OF ST. LOUIS, MISSOURI

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: Comptroller

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Counselor

ATTEST:

By: _____

Name: _____

Title: Register

Date: _____

ACKNOWLEDGED AND CONSENTED TO:

ST. LOUIS MUNICIPAL FINANCE CORP.

By: _____

Name: _____

Title: _____

EXHIBIT A
to
Festival Reservation Agreement

Festival Performance Area, Festival Loading Areas, Festival Zone

EXHIBIT B
to
Festival Reservation Agreement

MBE/WBE Policy

It is the policy of the City of St. Louis and Summer Rocks to ensure the maximum utilization of qualified minority business enterprises ("**MBEs**") and qualified women's business enterprises ("**WBEs**") in the proposed Festivals while at the same time achieving a competitive contract price for goods and services of high quality.

An "**MBE**" is defined as a sole proprietorship, partnership or corporation that is at least fifty-one percent (51%) owned, operated and controlled by minority group members. "**Controlled**" means that the minority group member(s) must have and exercise actual day-to-day operational and managerial control and receive an interest in capital and earnings commensurate with the member(s)' percentage of ownership. Minority groups covered by this policy include Black-Americans, Hispanic-Americans, Native-Americans, and Asian-Pacific Americans legally residing in the United States.

A "**WBE**" is defined as sole proprietorship, partnership or corporation that is at least fifty-one percent (51%) owned, operated and controlled by a woman or women. "**Controlled**" means that the woman or women must have and exercise actual day-to-day operational and managerial control and receive an interest in capital and earnings commensurate with the member(s)' percentage of ownership.

"Certified" is defined as recognized and certified by the City as a legitimate MBE and/or WBE.

"**Maximum Utilization**" means, with respect to the proposed Festivals, that Summer Rocks shall take all reasonable steps: (i) to provide MBEs and WBEs with the maximum opportunity to compete for all contracts and subcontracts to supply goods and services at each Festival, and to furnish supplies and labor ; and (ii) to award the maximum possible dollar volume of contracts to Certified MBEs and WBEs while at the same time achieving a competitive contract price for goods and services of high quality. The goals for maximum utilization are that at least twenty-five percent (25%) of the dollar volume of all contracts and subcontracts let for the project be awarded to Certified MBEs and that at least five percent (5%) of the dollar volume of all contracts and subcontracts let for the project be awarded to Certified WBEs. Participation by MBE and WBE firms located outside the St. Louis Metropolitan Statistical Area shall not count towards the goals established in this Policy. All MBEs and WBEs to which contracts are awarded shall perform commercially useful functions commensurate with the dollar amount of the contract. Joint venture, manufacturer and supplier participation shall be counted in the manner such participation is typically counted by the City. A MBE and/or WBE shall be considered to perform a commercially useful function when the MBE and/or WBE is responsible for the execution of a distinct element of the work of a contract and the carries out such responsibility by actually performing, managing and supervising all of the work involved.

Summer Rocks shall use reasonable good faith efforts to achieve Maximum Utilization and shall work with the City to formulate a plan for maximum utilization of Certified MBEs and WBEs. If a bid or proposal provided by an MBE or WBE is rejected, Summer Rocks shall provide a legitimate and non-discriminatory reason for rejecting the bid or proposal. Prior to the commencement of each Festival, Summer Rocks shall submit to the City an M/WBE Utilization Plan, which Plan shall be reasonably acceptable to the City. Summer Rocks shall thereafter adhere to that Plan for that Festival and, if following the award of any contract to an MBE or WBE, the MBE or WBE is unable to perform the work in a satisfactory manner in accordance with the required schedule, Summer Rocks shall make a reasonable good faith effort to replace such MBE or WBE with another Certified MBE or WBE. Within sixty (60) days after the last day of each Festival, Summer Rocks shall also cause the general contractor to submit a final M/WBE Utilization Report to the City, which Report shall document the actual utilization of and payments to MBEs and WBEs during the Festival.

Summer Rocks acknowledges that, in the event the actual dollar amount paid to MBEs and WBEs falls short of the amount to be paid to MBEs and WBEs as set forth in the M/WBE

Utilization Plan approved by the City, the City may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, Summer Rocks shall pay to the City, as liquidated damages, the monetary difference between (a) the amount to be paid to the MBEs and/or WBEs as set forth in the approved Plan; less (b) the amount actually paid to the MBEs and/or WBEs for performing a commercially useful function; provided, however, that no such payment shall be made when, for reasons beyond the reasonable control of Summer Rocks, the MBE and/or WBE participation set forth in the Plan is not met. Any amount so paid will be used by the City to offer or donated to organizations offering scholarship and/or internship programs for disadvantaged or disabled youth.

Good faith efforts to achieve Maximum Utilization may include, but are not limited to, such items as the following:

(a) Working with the City throughout the bidding, planning and execution of each Festival to ensure that available MBEs and WBEs are appropriately matched to contracting opportunities commensurate with such MBEs' and WBEs' skills, experience and capacity;

(b) Advertising in general circulation trade association and socially and economically disadvantaged business-directed media concerning the subcontracting opportunities;

(c) Providing written notice to a reasonable number of specific MBEs and/or WBEs that their interest in the contract is solicited, in sufficient time to allow the MBEs and/or WBEs to participate effectively;

(d) Following up on initial solicitations of interest by contracting MBEs and/or WBEs to determine with certainty whether the MBEs and/or WBEs are interested;

(e) Dividing the work into smaller portions to be performed by MBEs and/or WBEs in order to increase the likelihood of achieving Maximum Utilization (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE and/or WBE participation);

(f) Providing interested MBEs and WBEs adequate information about plans, specifications and requirements of the contracts;

(g) Negotiating in good faith with interested MBEs and WBEs and refraining from rejecting MBEs and/or WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

(h) Making efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance required by Summer Rocks; and

(i) Making effective use of the services of available disadvantaged business trade organizations, minority contractors' group, local, state and federal disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

Summer Rocks may provide for a reasonable retainage to be withheld until an MBE's or WBE's work is substantially completed. Prior to the release of the retainage, Summer Rocks shall file a list with the City showing the MBEs and WBEs used, the work performed, and the dollar amount paid to each Certified MBE and WBE.

EXHIBIT C
to
Festival Reservation Agreement

Use of Minority, Women, and City Resident Labor (Ordinance 69427)

An ordinance repealing ordinance 68412 and enacting in lieu thereof an ordinance pertaining to City public works projects, Tax Increment Financed (TIF) Projects and St. Louis City Bonded Projects, establishing apprenticeship training, and workforce diversity, and city resident programs for City-funded public works contracts, Tax Increment Financed (TIF) Projects and St. Louis City Bonded Projects; establishing a Community Jobs Board; containing definitions; construction workforce development and compliance fee; implementation and administration; waivers exceptions; non-compliance; non-discrimination policy requirement; reporting requirement; severability clause and an effective date.

WHEREAS, the City of St. Louis is committed to working in partnership with labor, business and the community to create a skilled workforce that reflects the diversity of the population of City; and

WHEREAS, a well-trained, diverse workforce is critical to the economic and social vitality of the City and the region; and

WHEREAS, statistical data and other evidence shows that minorities and women are under-represented in the skilled workforce of the construction industry, that such under-representation is due to past discriminatory barriers and that a diversity program is needed to rectify such under-representation; and

WHEREAS, the City's public works contracts, Tax Increment Financed (TIF) Projects and St. Louis City Bonded Projects can provide training and job opportunities as a means to increase the skills and diversity of the construction industry workforce; and

WHEREAS, the City is committed to ensuring that employment opportunities on City public works projects, Tax Increment Financed (TIF) Projects and St. Louis City Bonded Projects, are offered to City residents; and

WHEREAS, the City is committed to using training that is accepted industry-wide so that the resulting journey-level workers can enter the region's pool of skilled labor, fully qualified for jobs throughout the industry; and

WHEREAS, the City is committed to promoting apprenticeship opportunities on public works projects, Tax Increment Financed (TIF) Projects and St. Louis City Bonded Projects and ensuring that all contractors participate in this requirement.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Ordinance 68412 is hereby repealed and enacted in lieu thereof is the following:

SECTION TWO. Definitions. When used in this ordinance:

1. "Labor Hours" shall mean the total number of work hours workers receive as an hourly wages who are directly employed on the site of the public works project. "Labor Hours" shall include hours performed by workers employed by the contractor and all subcontractors working on the project. "Labor Hours" shall not include hours worked by non-working foremen, superintendents, owners and workers who are not subject to prevailing wage requirements.

2. "Agency" shall mean the St. Louis Agency for Training and Employment (SLATE).

3. “SLDC” shall mean the St. Louis Development Corporation.

4. “Minorities” shall mean persons who are citizens or lawful permanent residents of the United States and who:

a. Have origins in any of the Black racial groups of Africa (“Black Americans”);

b. Have origins in any of the peoples of Mexico, Puerto Rico, Cuba, Central or South America, regardless of race (“Hispanic Americans”);

c. Have origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent or the Pacific Islands (“Asian Americans”); or

d. Maintain cultural identification through tribal affiliation or community recognition with any of the original peoples of the North American continent; or those who demonstrate at least one-quarter descent from such groups (“Native Americans”).

5. “Public Works Contract” shall mean, for the purposes of this Ordinance, a contract for construction work entered into by the Board of Public Service and signed by the President of the Board of Public Service in the name of the City, for which the design team’s estimated base value of the contract is One Million Dollars or more.

6. “City Bonded Projects” shall mean, for the purposes of this Ordinance, those projects which are supported for the development of local infrastructure with bonds issued by the Comptroller’s Office.

7. “Tax Increment Financed (TIF) Project” shall mean, for the purposes of this Ordinance, those projects outlined in Missouri’s Real Property Tax Increment Allocation Redevelopment Act, §§ 99.800-99.865, RSMo.

SECTION THREE. Apprenticeship Goal. On each Public Works Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design team’s estimated base value of the contract is One Million Dollars or more, the Agency shall set a goal that a minimum percentage of fifteen percent (15%) of all the contract’s Labor Hours are to be performed by apprentices enrolled in any training program approved or recognized by the United States Department of Labor, Employment and Training Administration (ETA), Office of Apprenticeship (OA). This goal shall be subject to the waiver provision set forth in Section Nine. Such Apprentices, if they are minorities and/or women, may also be counted towards the goals set forth in Section Four.

SECTION FOUR. Participation Goals for Minorities and Women. On each Public Works Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design team’s estimated base value of the contract is One Million Dollars or more, the Agency shall set a goal that 25% of all Labor Hours are to be performed by Minorities and 5% of all contract Labor Hours are to be performed by women.

SECTION FIVE. City Resident Participation. On each Public Works Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design team’s estimated base value of the contract is One Million Dollars or more, the Agency shall set a goal that 20% of all Labor Hours are to be performed by persons who reside in the City of St. Louis (“City Residents”). Such City Residents, if they are minorities and/or women, may also be counted towards the goals set forth in Section Four.

SECTION SIX. Construction Workforce Development and Compliance Fee. The Agency and SLDC shall determine the incremental costs associated with implementation of monitoring and compliance on these projects and will establish appropriate fees and other funding sources to cover the costs of monitoring and compliance on these projects to support workforce development, diversity and inclusion initiatives including pre-apprenticeship programs.

SECTION SEVEN. Implementation and Administration. The Agency and SLDC shall be responsible for the administration and implementation of this ordinance and shall develop and adopt rules in furtherance of such administration and implementation. Said rules shall set forth a system for monitoring contractors' actual use of apprentices, minorities, women and City Residents. The Agency and SLDC shall establish contract specification language to implement the apprenticeship goals, the participation goals for minorities and women, and the city resident participation goals, and said language shall be included in all applicable contracts as determined by the Agency and SLDC. The Agency shall secure additional expert services as is deemed necessary to effectively implement this Ordinance.

Pre-Award Conferences ("Conferences") shall be held by the Board of Public Service for General Contractors and Sub Contractors. Conferences shall be for the following purposes: (a) to confirm that the apparent lowest and most responsive bidder is committed to meeting the goals established in the bid solicitation; and (b) to offer to apparent lowest and most responsive bidder the resources of SLATE in consultation with the Construction Prep Center, the Construction Career Academy and ACCESS St. Louis, to assist the bidder and subcontractors in meeting such goals.

SECTION EIGHT. Community Jobs Board. The Mayor of the City of St. Louis with the President of the Board of Aldermen shall appoint a Community Jobs Board with approval from the Board of Aldermen, which shall have thirteen (13) members. Two (2) members shall be appointees of the Comptroller; two (2) representatives of women construction contractors' associations; two (2) members shall be representatives of minority construction contractors' association(s); three (3) members shall be representatives of community and faith based organizations; two (2) members shall be representatives of construction labor unions; and two (2) members shall be representatives of general and prime construction contractor associations. The Community Jobs Board shall create a labor, management and community sub-committee to review the impact of the Ordinance on specific projects and the Board shall review and provide feedback to the Agency on the manner in which this Ordinance is implemented and to review the results of the implementation of this Ordinance and provide feedback to the Agency on whether or not this Ordinance is achieving the intended results. The Agency shall provide quarterly reports, including a report of any waivers granted by the Agency during the preceding quarter, to the Community Jobs Board and shall schedule quarterly meetings of the Community Jobs Board. Members of the Community Jobs Board shall serve in staggered two year terms.

SECTION NINE. Waivers and Exceptions. The Agency is authorized to issue a written waiver or reduction of the goals set forth in Sections Three, Four and Five of this ordinance on specific contracts for one or more of the following reasons:

A. The Agency determines that the project carries a disproportionately high ratio of material costs to Labor Hours, which does not make the goals economically feasible;

B. The project is being undertaken in connection with an emergency;

C. The Agency otherwise determines that a waiver or reduction is appropriate.

Waivers or reductions may be made before or during the bidding process if information related to A, B and C of this section not previously known is brought to the attention of the contracting agency. No waivers shall be granted following the award of a contract unless such contract is terminated and the project is re-bid.

SECTION TEN. Non-Compliance. The failure to meet the requirements of this Ordinance, including but not limited to failure to submit required documentation and reporting, failure to meet to resolve issues and failure to use of good faith efforts to comply, constitutes a material breach of the Ordinance.

1. If there is a violation of this ordinance, the Agency will first cite the violator in writing giving them notice of the violation and a five day notice cure.

2. If after the five days there is no cure, punitive actions may be taken by the Agency.

Remedies for Breach - In the event of a breach of this Ordinance, the Agency shall place the Developer and the General Contractor on a list maintained by the Agency and the Developer and General Contractor may be barred from participating in public works contracts or Tax Increment Financed (TIF) Projects for a period up to two years following the notice of violation in addition to any other sanctions available to the Board of Public Service for public works contracts. The Agency shall make quarterly reports to the TIF Commission, the Board of Public Service, the Board of Aldermen, the Mayor and the Comptroller of the City of St. Louis regarding the Developers and General Contractors cited and listed for violations of the Ordinance.

SECTION ELEVEN. Non-discrimination Policy Requirement. On each City Public Works Contract, Tax Increment Financed (TIF) Project and St. Louis City Bonded Project for which the design teams estimated base value of the contract is one million dollars ($1,000,000) or more, the Agency shall require that all contractors assigned to work have a personnel policy which prohibits discrimination based upon race, color, creed, religion, sex, national origin, age, disability, veteran status, sexual orientation, gender identity or expression.

SECTION TWELVE. Reporting Requirement. The Agency shall furnish an annual report to the Board of Aldermen on or before September 30 of each year for the preceding fiscal year, describing the progress of administering and implementing the requirements of this ordinance.

SECTION THIRTEEN. Severability Clause. The provisions of this ordinance shall be severable. In the event that any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

SECTION FOURTEEN. Effective Date. The provisions of this ordinance shall become effective sixty days after its approval by the mayor or sixty days after its adoption over the veto of the mayor. Said provisions shall apply to all Requests for Proposals or bids issued, and contracts awarded pursuant thereto, on or after said sixty day period.

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EXHIBIT D
to
Festival Reservation Agreement