

WOLF PEN CREEK USER AGREEMENT

THIS USER AGREEMENT for Wolf Pen Creek Park, the "Facility," located at 1015 Colgate Drive, College Station, Texas, 77840, is hereby made and entered into by and between the CITY OF COLLEGE STATION, a Texas Home-Rule Municipal Corporation hereinafter referred to as "City" and Wiener Fest hereinafter referred to as "User."

The City desires to make all and various components of the Facility, including Wolf Pen Creek Amphitheater with or without the Green Room, Wolf Pen Creek Festival Site, the Plaza and the Facility in its entirety available on a user basis for non-city sponsored or co-sponsored events for the purpose of special events or leisure activities that have socially acceptable and recreational value for the enjoyment of the citizens and visitors of the City and of the Brazos Valley community.

NOW THEREFORE, for and in consideration of the following promises and conditions, the City hereby gives User the right to use and occupy the Facility. User is to use the Facility or portion thereof only for the purposes expressed in this agreement and for no other purpose without the prior written consent of the City.

I. **FACILITY USED** (select requested facility or facilities)

- ☒ Wolf Pen Creek Amphitheater (includes usage of the Green Room)
☒ Wolf Pen Creek Festival Site
☒ The Plaza
☒ Wolf Pen Creek Amphitheater & Festival Site

II. **USER INFORMATION**

USER (Name of company, corporation, organization, or individual):

Judylethes, Wiener Fest

ADDRESS: PMB 900, 3515 B, Longmire Drive, College Station TX
Street Suite/Apt. #
77845
City State Zip Code

USER CLASSIFICATION:

- ☒ Individual Serial # 87648931
☐ Business (Tax ID #: _____)
☐ Non-Profit Organization (Tax ID #: _____)

CONTACT(S): Judy LeUnes Phone: 979-492-2889
Name: Judy LeUnes
Email: JudyLeUnes@gmail.com
Name: _____ Phone: _____
Email: _____

III. EVENT INFORMATION

EVENT NAME: Wiener Fest - Racing Event
EVENT DATE(S): Oct. 19-21, 2018
PREP TIME BEGINNING: Friday a.m. GATES OPEN: _____
EVENT BEGINS: Friday EVENT ENDS: Sunday p.m.
PROJECTED TIME TO COMPLETE CLEAN UP (Note: Costs are based upon actual time, with a minimum of 2 hours assessed) : _____
ESTIMATED NUMBER OF ATTENDEES: 6,000
PERFORMERS (ACTS): _____

FULL DESCRIPTION OF EVENT (include principal performer/activity):

Wiener Races, music, vendors, games, food
Wanna' Dog Races
Beer

NAME AND LOCATION OF FACILITIES PREVIOUSLY USED, RENTED OR LEASED BY APPLICANT:

Wolf Pen Creek

IV. VENDING & TICKET SALES

WILL CONCESSIONS BE SOLD? *Yes ☒ No ☐
Please attach WPC Vendor Permit relating to concessions. What items will be sold?

WILL ALCOHOLIC BEVERAGES BE SOLD? *Yes ☐ No ☐
WILL ALCOHOLIC BEVERAGES BE SERVED? *Yes ☐ No ☐

**Alcohol may be sold or served on the Facility premises only if all policies and laws of the City of College Station, Brazos County, and the State of Texas are observed, including the regulations of the Texas Alcoholic Beverage Commission (TABC).*

Please attach WPC Vendor Permit relating to sale of alcohol. What items will be sold?

WILL SOUVENIR ITEMS BE SOLD? *Yes ☒ No ☐

Please attach WPC Vendor Permit relating to sale of souvenirs. What items will be sold?

WILL OUTSIDE FOOD OR DRINKS BE ALLOWED? Yes ☐ No ☐

TICKET PRICES: Advance \$ _____ Online \$ _____
Gate \$ _____ Other \$ _____

V. GENERAL INFORMATION, POLICIES, AND USER REQUIREMENTS

1. **RESERVATIONS:** No verbal agreements for the use of the Facility will be valid. All reservations must be confirmed in writing. Deposits shall be paid in full at the time reservation is made and the payment of all appropriate fees shall be made no later than thirty (30) business days prior to event or within thirty (30) business days of being invoiced, for those costs not assessed until during or after usage of the Facility.

Application for use of the Facility is not a guarantee or entitlement to same. It is recommended that any event with an anticipated attendance of 5,000 people or more allow a minimum of sixty (60) days for review.

2. **ABUSE OF FACILITY POLICIES:** The Special Events Supervisor or his/her designee reserves the right to eject any person or group for breach of this Agreement, for violating applicable laws or for otherwise posing an unreasonable risk to the health safety and welfare of the general public. Any use of the Facility where there is violation of the terms of this Agreement, or applicable laws or where a use poses an unreasonable risk to the health safety and welfare of the general public may form the basis for the City to determine that the criteria for granting use of the Facility for a subsequent event is not met in accordance with applicable rules and regulations.
3. **WEATHER:** The Facility is equipped with a Thorguard Lightning Prediction System. A copy of the procedures relating to this equipment will be provided to the User upon request. The Special Events Supervisor has the right to terminate an event if in his/her opinion the ongoing weather situation could pose an unreasonable hazard to the guests, performers, staff, or the Facility. Notice – the Wolf Pen Creek Park and facilities therein are built in a flood plain and are subject to flooding. If flooding occurs, the User is responsible for ensuring the safety of its guests, performers and equipment.
4. **SOUND ORDINANCE, LAWS AND POLICIES:** Sound levels at the Facility may not exceed the levels established by the City of College Station Code of Ordinances or state law. Should sound levels exceed the established level or cause a disturbance or should the content cause a breach of the peace, the Special Events Supervisor or his/her designee will request that the volume be lowered or the amplification turned off. Failure to comply with this request may result in fines, arrest, termination of the event, and/or forfeiture of deposit and user fees. User agrees to comply with all applicable laws of the United States, State of Texas, ordinances of the City of College Station, including Police and Fire Department requirements, and all rules, regulations and policies as may be adopted from time to time by the City governing or otherwise affecting the use of the Facility. The most recently adopted Wolf Pen Creek Usage Policy is hereby made a part of this Agreement.

5. **ANTI-DISCRIMINATION:** Discrimination by the User, its officers, agents, volunteers, or employees on account of age, race, color, religion, sex, physical disability or national origin in admission to the premises is prohibited.
6. **UNACCEPTABLE USE OF CITY FACILITY:** At any time on or before use of the Facility, City reserves the right to refuse, stop, or require modification of use by User based upon one or more of the following:
- Depiction in any form of nudity or semi-nudity, profanity, obscenity, or lewdness, or characterizations which suggest, depict or promote any such element or sexually oriented products, activities or materials;
 - Promotion in any form of illegal drugs, illegal drug use or illegal drug materials, or characterizations which suggest or depict the promotion or glorification of any such products, activities or materials;
 - Promotion of the use or sale of firearms, explosives or other weapons, or the depiction, suggestion or glorification of violence or acts of a violent nature;
 - Use of language or descriptive material which taken in form and context is deemed to be unsuitable for and contrary to community standards of appropriateness for governmental or family publications;
 - Use of words, language, representations or descriptive material of any kind having more than one meaning or connotation, one of which would otherwise be prohibited under this policy; or
 - When the City determines the health, safety and welfare of the general public is unreasonably jeopardized.
7. **FACILITY PROPERTY:** No decorative or other materials shall be nailed, tacked, screwed, glued or otherwise physically attached to any part of the Facility without prior authorization from the Special Events Supervisor. Any group using the Facility agrees to leave the premises in as good condition as it was prior to the usage. User agrees to assume all responsibility for any damages to the premises or facility as a result of the User's use. Should the User not comply, all or part of the security deposit will be retained by the City to repair, replace, or pay for any property damage to the Facility, and/or User may be invoiced by City for any property damage, replacement and repairs.
8. **PARKING:** Post Oak Mall is the designated area for all event parking. Parking on the grass is strictly prohibited unless expressly authorized in writing by the City.
9. **CURFEW:** All activities at the Facility that begin on Friday or Saturday must end by 1:00 a.m. the following morning. All activities that begin on Sunday through Thursday must end by 10:00 p.m. the same day.
10. **COPYRIGHT/ROYALTY FEES:** User agrees, represents, and warrants that nothing contained in the event program, performance, concert, exhibition, or in any other way connected with the User's activities under this Agreement shall violate or infringe upon any copyright, patent, right of privacy, or other statutory or common law right of any person, firm, or corporation. Further, the User warrants that all programs, performances, concerts, exhibitions or anything used or performed under this Agreement involving works protected by statutory or common law copyrights or other proprietary law have been duly licensed or otherwise authorized by the owners of such works or legal representatives thereof. User further agrees to indemnify and hold harmless the City of College Station, its officers, agents, volunteers, and employees, from any and all claims, fees, expenses or costs including legal fees asserted or incurred with regard to such warranty, agreement and/or representation. Standard ASCAP, SESAC, and BMI licensing fees will be paid as applicable by the City of College Station according to current municipal rates for the gross revenue. Any licensing fees required of the User will be the responsibility of the User to pay.
11. **SECURITY:** If applicable, User agrees to employ, at User's sole expense, City of College Station Police Officers and EMS personnel or other City approved safety/security officers or personnel to be present at least thirty (30) minutes before the beginning of the event, during the entire event, and up to thirty (30) minutes after the event. The City reserves the right and authority to determine the reasonable number of officers and EMS persons necessary for a particular event so as to ensure the safety of the public and the premises at all times during which the Facility is used and occupied by the User, or User's agents, employees and other persons authorized or present because of User's use of the Facility. The User shall contact the

College Station Police Department to make the necessary arrangements for security personnel, and User shall contact the City Fire Department to make the necessary arrangements for EMS services. The City will charge back the expense of these officers and EMS personnel to the User in the final invoice following the event.

12. **INSURANCE REQUIREMENTS FOR CLASS A, B AND C EVENTS:** User is required to procure and maintain, at its sole cost and expense for the duration of this Agreement, Commercial General Liability insurance in the name of the User, for limits of not less than \$1,000,000 for Class A and B events and \$2,000,000 for Class C events, for personal injury, death, or property damage to property arising out of any one occurrence. This insurance policy must cover, in addition to the general public, all entertainers, as well as their support staff, and any other individual participating in or attending the event for which the facility is used. The General Liability insurance shall be written by a carrier with an A:VIII or better rating in accordance with the current A. M. Best Key Rating Guide, and only insurance carriers licensed and authorized to do business in the state of Texas will be accepted. User must furnish proof of coverage through a Certificate of Insurance at least two weeks prior to the event. The City must be named as Additional Insured with a waiver of subrogation. All insurance certificates will be forwarded to the City's Risk Management Division for approval.

For events with expected attendance of 5,000 or more persons, additional premises insurance will be required. The City may choose to acquire said insurance and the costs will be added to the facility rental fees.

13. **INDEMNIFICATION. IT IS AGREED THAT USER INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL ACTIONS, CLAIMS, COSTS, DAMAGES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES AND COURT COSTS, ARISING OUT OF PERMITTEE'S USE OF THE FACILITY. FURTHERMORE, SUCH INDEMNIFICATION SHALL APPLY WITH RESPECT TO ALL ACTS OR OMISSIONS OF THE USER AND USER'S PARTICIPANTS, STUDENTS, SPECTATORS, INVITEES, LICENSEES, RELATIVES, FRIENDS AND THEIR RESPECTIVE INVITEES OR LICENSEES ASSOCIATED THEREWITH. THE USER SHALL BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY WHATSOEVER BY REASON OF THE NEGLIGENCE OF THE PERSON TO WHOM SUCH PERMIT IS ISSUED AND HIS OR ITS AGENTS, OFFICERS OR EMPLOYEES. SUCH INDEMNITY SHALL APPLY REGARDLESS OF WHETHER THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY INDEMNIFIED HEREUNDER, THE USER OR ANY THIRD PARTY.**

14. **RELEASE. THE USER HEREBY HEREUNDER AND HEREBY RELEASES, RELINQUISHES, AND DISCHARGES THE CITY, ITS OFFICERS, AGENTS, VOLUNTEERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO OR DEATH OF ANY PERSON AND ANY LOSS OF OR DAMAGE TO ANY PROPERTY THAT IS CAUSED BY, ALLEGED TO BE CAUSED BY, ARISING OUT OF, OR IN CONNECTION WITH THE USER'S USE OF THE FACILITY. THIS RELEASE SHALL APPLY REGARDLESS OF WHETHER SAID CLAIMS, DEMANDS, AND CAUSES OF ACTION ARE COVERED IN WHOLE OR IN PART BY INSURANCE AND REGARDLESS OF WHETHER SUCH INJURY, DEATH, LOSS, OR DAMAGE WAS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY, ANY OTHER PARTY RELEASED HEREUNDER, THE USER, OR ANY THIRD PARTY.**

15. **ADVERTISING:** Advertising or announcements will not be made public without a security deposit and prior approval of this Agreement by the City. All visual media must include language specifying all Wolf Pen Creek policies relevant to the User's event. Use of the City of College Station's logo or graphics in advertising or announcements is strictly prohibited unless otherwise expressly authorized by the City in writing.

VI. SECURITY DEPOSITS, REFUNDS AND FEES

1. **SECURITY DEPOSIT.** A security deposit is required for all reservations and must be paid in full when the reservation is made. Security deposits shall be used by the City to hold and confirm reservations, and to repair, replace, or pay for any property damage that occurs during the User's event at the Facility. The minimum deposit

required is set forth in the most recent resolution adopted by City Council with respect to this subject matter, and as attached hereto.

User shall be responsible for all damages to the Facility and for the cost of any unreasonable wear and tear of the Facility or services, emergency or public safety services including police and fire, provided to, at or dispatched to the Facility as a result of User's misuse, improper or unlawful use of the Facility.

The deposit may be held by the City at the discretion of the City for a period of time reasonably necessary to determine the full extent of damages and to make all repairs or secure replacements. The unused portion of the deposit will be refunded upon the following conditions: 1) all terms of this Agreement have been met, 2) the Facility is left in good condition, and 3) cancellation procedures have been properly followed.

2. USER FEES: User Fees are established and approved by the City of College Station City Council on a regular basis. The user fee must be paid thirty (30) business days in advance of the event. The current schedule of fees is set forth in the most recent resolution adopted by City Council of the City with respect to this subject matter, and as attached hereto.

Wolf Pen Creek Plaza Rental Fees:

CLASS	MONDAY-THURSDAY	FRIDAY-SUNDAY
Rental(Includes Pavillion and Restrooms)	\$150	\$200

Wolf Pen Creek Amphitheater Rental Fees

CLASS	MONDAY-THURSDAY	FRIDAY-SUNDAY
Private Rental	\$500	\$600
Non-Commercial-Benefit Rental	\$750	\$900
Private Commercial Rental	\$1,000	\$1,200

Wolf Pen Creek Festival Site Rental Fees

CLASS	MONDAY-THURSDAY	FRIDAY-SUNDAY
Private Rental	\$200	\$300
Non-Commercial-Benefit Rental	\$400	\$500
Private Commercial Rental	\$600	\$700

Wolf Pen Creek Amphitheater & Festival Site Rental Fees

CLASS	MONDAY-THURSDAY	FRIDAY-SUNDAY
Private Rental	\$600	\$800
Non-Commercial-Benefit Rental	\$950	\$1,200
Private Commercial Rental	\$1,200	\$1,500

3. SERVICE/PERSONNEL FEES (STAFF COSTS): All events held at the Wolf Pen Creek Amphitheater or Festival Site will be required to have the City of College Station's staff representative and backstage manager present at the expense of the User. For all events at the Amphitheater or Festival Site, the User is required to utilize volunteers or its own internal employees for all other elements of the event. Costs associated with the City staffing as set forth in this paragraph will be charged to the User upon the conclusion of the event in the form of a final invoice. The City reserves the right to collect staff costs prior to an event.

4. VENDOR SALES FEES: *See Vending Agreement*

5. TICKET SALES AND ADMISSION FEES: The User may charge an admission fee to the event. The number of tickets available for sale shall be limited to seven thousand (7,000) for Amphitheater events. While an event is in progress, the City Special Events Supervisor or his/her designee may authorize additional admission if such would not jeopardize the health, safety, and good order of the event. User may choose to use the Wolf Pen Creek Amphitheater Box Office to set up ticket sales by making arrangements with the City Special Events Supervisor.

6. CANCELLATION REFUNDS 60 DAYS OR MORE: Full refunds of fees or deposits, including security deposit, require advance written notice of cancellation to the City Special Events Supervisor sixty (60) days or more prior to the user date.

7. CANCELLATION REFUNDS LESS THAN 60 DAYS: If the event is cancelled less than sixty (60) days in advance of the originally scheduled date, any fees or deposits, including security deposits, will be forfeited by the User in favor of the City. If the event cannot be held or rescheduled due to weather, the User is still responsible for all incurred expenses, and some or all of the user fee may be available after actual City costs are paid.

8. CLASSIFICATION OF RESERVATIONS:

User fees for the Facility shall be determined by the classification of the reserving party. All parties wishing to reserve or use the Amphitheater or Festival Site shall be classified as one of the following:

a. **CLASS A (PRIVATE):** Use by a person or persons for non-commercial purposes such as weddings, reunions, etc. This type of user will not invite the general public nor advertise through public media.

b. **CLASS B (NON-COMMERCIAL BENEFIT):** Use by a person, civic organization, non-profit corporation or educational institution possessing a non-profit association state charter who sponsors an activity, event, or meeting of community interest. This class of event will be free and open to the public, with no money derived whatsoever from the event; or, this class of event could include fundraising for a charitable purpose for which at least 75% of the funds raised will be donated to the stated purpose or recognized organization which typically will have 501(C)(3) IRS status. Class B events can also be political in nature.

c. **CLASS C (PROFESSIONAL COMMERCIAL):** Use by an individual or company charging no admission and taking no profits on the premises, but whose motivation in holding the event is for promotional purposes or subsequent profit making; OR, use by a private or individual group whose purpose is to further the pursuit of a profession, business or company—this group would charge admission and/or sell merchandise. Concerts typically fall under this classification.

This event will be classified as a Class _____ event and the Facility shall be used for no other purpose without the City's written consent.

VII. TOTAL FEES DUE

The following amounts are due at time of reservation for User's use of the Facility pursuant to this Agreement. Actual final costs may vary pursuant to the terms herein, including costs for additional clean up and payment for unreasonable wear and tear as may be applicable.

1. DEPOSIT/SECURITY:

The User agrees to pay the following as a deposit/security for the use of the Facility for the above stated purpose (check which applies).

☐ \$200 for the Plaza or Festival site

☒ \$600 for the Amphitheater

2. USER FEE:

a) The User agrees to pay \$ _____ on or before _____ for User of the Facility for the above stated purpose on the date(s) and time(s) indicated.

3. VENDOR PERMITS (INCLUDING ALCOHOL VENDOR PERMIT): The User agrees to pay the sum of \$ _____ for _____ Vendor Permit(s) for each vendor present, in addition to a vendor percentage, if applicable.

4. STAFF COSTS, PERSONNEL, AND SECURITY: The User agrees to pay the sum of \$ _____ (estimated based on information provided by the User) for staff and security costs.

I, THE UNDERSIGNED, AGREE TO ADHERE TO ALL OF THE ABOVE AND ALL APPLICABLE GUIDELINES, ORDINANCES, POLICIES, USER REQUIREMENTS AND RESTRICTIONS, AND TO PAY ALL APPLICABLE DEPOSITS, FEES AND EXPENSES.

ACCEPTED AND AGREED:

USER:

For: Wiener Fest

By: Judy LeUnes

Name: Judy LeUnes

Title: owner/ Found

Date: Oct. 20, 2017

APPROVED BY CITY:

By: _____

Name: _____

Title: _____

Date: _____

David Schmitz

From: Judy LeUnes <wienerfestbcs@gmail.com>
Sent: Thursday, November 9, 2017 1:13 AM
To: Judy LeUnes
Cc: Darling, Kathleen; David Schmitz; Gabriela Salazar; Virginia McCall
Subject: Re: EIN number for the Wiener Fest™ Contract

***** This is an email from an EXTERNAL source. DO NOT click links or open attachments without positive sender verification of purpose. Never enter USERNAME, PASSWORD or sensitive information on linked pages from this email. *****

Oops! EIN 82-3305939

On Thu, Nov 9, 2017 at 12:36 AM Judy LeUnes <judyleunes@gmail.com> wrote:

Hi, Virginia.

I am sending the EIN number for the nonprofit status for the contract for Wiener Fest™ for October 19 - 21, 2018.

I will be in today, in the afternoon to bring the paperwork for the ribbon cutting with the Chamber of Commerce on January 25th, 2018. I have copied you to the emails to Brian Miller at the Chamber that I sent earlier in the last few days as we tried to find a date.

Thanks and I look forward to working with you on several upcoming events!

Judy

Judy LeUnes

Wiener Fest™, Founder and President

Personal email:

judyleunes@gmail.com

cell: 979-492-2889

Non-Profit email:

wienerfestbcs@gmail.com

cell: 979-599-4588

Interested in any of these organizations? Let me know!

Founder and Trademark Owner of: Wiener Fest™

BCS Chamber of Commerce Member - Wiener Fest™

Legislative Affairs Committee Member

BCS Chamber Ambassador

Member of American Business Women's Association

Member Leading Women Express Network

Member of AggieLand Pets With a Purpose - Therapy Dog, Remy

Member of College Station Noon Lions Club

Founder of: BRA ART EVENT benefiting Health for All

Founder of: Brazos Valley Fashion Week benefiting Fun For All Playground

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Judy LeUnes
Founder and Trademark Owner Wiener Fest TM
Non-Profit President, Wiener Fest TM
Cell: 979-599-4588
wienerfestbcs@gmail.com
Facebook: Wiener Fest the Original

Helping those who help unwanted and homeless animals.

**Our next October event is: October 19-21, 2018
at Wolf Pen Creek Amphitheater
College Station, TX**