

FACILITY ENTERTAINMENT MANAGEMENT AGREEMENT

This Facility Entertainment Management Agreement is Between the City of Forney, Texas, a Municipal Corporation of the State of Texas (hereafter referred to as “City”) and JAC Management Group Forney, LLC, an Ohio Limited Liability Company (hereafter referred to as “JAC” or “Manager”), (collectively referred to as the “Parties”).

BACKGROUND

The City is the owner of a venue known as Spellman Amphitheater with a capacity of approximately 5,000 persons and includes the surrounding real estate, improvements, and parking lots generally located at 241 FM 548, Forney, Texas 75126 (hereafter referred to as the “Facility”). The City desires to engage JAC to provide quality entertainment management services including booking and scheduling services, marketing services, ticketing services and food and beverage services for the express purpose of enhancing the public use and enjoyment of the Facility.

JAC has the necessary experience in the business of providing entertainment management services including the ticketing services, food and beverage services and event marketing of a public facility. The City will rely upon the entertainment management services of JAC for the entertainment and event marketing services for the Facility.

It is the intent of the Parties to structure an agreement wherein City pays JAC a predetermined entertainment management fee to offset entertainment costs and limit City’s exposure as it relates to the entertainment costs associated with Facility. To that end, JAC shall be entitled to use the entertainment management fee to operate facilities entertainment and other services herein of which any profit realized is the property of JAC and any loss is the responsibility of JAC.

NOW THEREFORE, in consideration of the mutual promise and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged the parties agree as follows:

Article 1 - Appointment of Manager

1. **Engagement of JAC:**

The City hereby engages JAC and authorizes it to take sole, entire, exclusive charge of the entertainment at the Facility, with the exception of current annual City Events. City Events are community events that the City currently promotes and produces annually including, but not limited to the summer concert series and movies in the park. City Events are typically free community events exclusively promoted and or produced by the City (hereinunder referred to as “City Events”). The Manager hereby accepts the engagement and authorization and agrees to use skills and best efforts as entertainment manager to effectively operate entertainment (hereinunder referrerd to as “Managers’ Events” at the Facility. Managers’ Events shall be defined as all events at Facility other than the City Events as defined above.

- 1.1 Performance of Manager Duties:
 Manager agrees to render capable and competent services and to exercise due care in accordance with the standard practices acceptable and common in the industry.
- 1.2 In its capacity as Entertainment Manager, JAC shall have sole authority over the day to day entertainment of the Facility, with the exception of City Events.
- 1.3 Independent Contractor Status:
 It is acknowledged that the expressed intent of City to Manager is that this Agreement shall be so construed that the rights and duties hereunder granted by City to Manager are those of an independent contractor. Further, the City retains title and ownership of the Facility and Manager will not acquire title to or any security interest in the Facility.
- 1.4 Consultant Agreement:
 Manager is hereby authorized to enter into a consultant agreement for consulting and supplemental entertainment management services to maximize the utilization and profitability of the Facility, cost of which shall be Manager’s responsibility.

Article 2 - Duties of Manager

- 2. Manager, at Manager’s cost, shall take such actions and perform such duties, as Manager deems necessary and desirable, subject to the provisions hereof, of the Facility including, but not limited to the following:
 - 2.1 Minimum Schedule of Managers’ Events:
 Manager shall book, promote and/or produce a minimum of “National Touring” concerts or similar events per calendar year of the Term based on the following schedule:

January 1, 2020 – December 31, 2020	5 Concerts/Events
January 1, 2021 – December 31, 2021	5 Concerts/Events
January 1, 2022 – December 31, 2022	7 Concerts/Events
January 1, 2023 – December 31, 2023	7 Concerts/Events
January 1, 2024 – December 31, 2024	7 Concerts/Events
 - 2.2 Management Office:
 City shall provide adequate space in the Facility or location mutually agreed upon by the Parties for management offices at the Facility. Manager may at its own discretion hold regular business hours and shall be reasonably accessible to City after regular business hours by cellular phone.
 - 2.3 Employment of Personnel:
 - (a) During the management term and the renewal term, if any, JAC, at JAC’s sole cost, shall select, train, schedule and employ at the Facility such number of employees, as JAC deems necessary or appropriate to satisfy its responsibilities hereunder. JAC shall have

authority to hire, terminate, discipline and discharge any and all personnel working for JAC at the Facility.

(b) JAC employees at the Facility shall not be considered to be employees of City, and JAC shall be solely responsible for their supervision and daily direction and control. JAC shall be solely responsible for paying, processing and disbursing payroll checks to JAC employees. Parties acknowledge JAC is not required to be onsite or have employees onsite other than Managers' Events.

(c) Manager agrees that it shall not discriminate against any employee or applicant for employment because of race, religion, national ancestry, age or sex.

2.4 Event Bookings and Rentals:

Manager shall be solely responsible for Facility calendar, scheduling and event bookings.

2.5 Scheduling:

Manager shall develop and maintain all schedules for events held at the Facility. All scheduling shall be accomplished in a manner so as to maximize the use of the Facility and make the Facility more accessible to the community. The Parties understand and agree that Manager shall be empowered to negotiate Event Rental Agreements, which may deviate from the standard rate when such negotiation is deemed by Manager to be appropriate.

2.6 Property Security for Managers' Events:

Manager shall be responsible for hiring and supervising all security services for the Facility. The cost of such security will be paid by Manager.

2.7 Cleaning for Managers' Events:

The Manager shall be responsible for providing and supervising all cleaning services to the Facility related to Managers' Events.

2.8 Workers' Compensation Insurance:

Manager shall provide City with a certificate that Managers' employees are covered by Workers' Compensation Insurance.

2.9 Food Services:

(a) JAC shall have the exclusive right to operate or contract for the operation of the Food Services, Suite Services, Concession Services, Vending Services and the service and sale of Alcoholic Beverages, at all areas of the Facility.

(b) JAC shall comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operations.

(c) Any and all profit or loss derived by said food services will be property of Manager.

- 2.10 Operational Services during Managers Events:
Manager shall direct all services required to stage (set-up and tear-down) the Facility for each event including, without limitation, services involving the stage area, event floor, sound system, lighting system, stage rigging, dressing area, stage equipment, loading in and loading out. Manager shall hire and manage all management staff, ticket sales personnel, ushers, and other personnel required for the operation of the Facility including; but not limited to, ticket-taking, novelty sales, program distribution and assistance to patrons.
- 2.11 Negotiate with Third Parties:
Manager may exclusively negotiate, execute, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising and sponsorship agreements, catering and concession agreements, decorating agreements, supplier agreements, service contracts and all other contracts and agreements in connection with the entertainment management, promotion and promotion at the Facility.
- 2.12 Sponsorship:
Manager shall exclusively create and implement sponsorship inventory at the Facility, all revenue and or expense derived from said sponsorships will be property of Manager.
- 2.13 Ticketing:
Manager shall implement ticketing system of its choice that will serve as the exclusive ticketing system of Facility. Manager is responsible for all revenues and expenses associated with ticketing system. Currently no onsite box office exists. Therefore, tickets will be web based only. Manager may at its own discretion construct a temporary day of show box office when necessary and applicable. Manager shall charge industry standard ticketing fees, convenience fees and all income and expense derived from such fees are property of Manager. Manager shall make ticketing system available to City for City Events.
- 2.14 Use of City Equipment/Assets
Manager shall be granted authority without limitation from City to utilize all City assets at Facility for each event including, but not limited to stage, temporary stage, floor, sound system, lighting system, stage rigging, dressing area, stage equipment, barricade and any equipment/assets deemed necessary to perform entertainment management duties herein.

Article 3 - Term

3. Terms of this Agreement shall commence on January 1, 2020, for a - five (5) year period ending on December 31, 2024, unless earlier terminated pursuant to the provisions of this Agreement.
- 3.1 This Agreement shall be renewed for an additional five (5) year period commencing January 1, 2025, unless a notice of non-renewal is provided in writing at least sixty (60) days prior to the end of the Term of the Agreement.

3.2 The City shall make payments under this Agreement pursuant to Article 4 of this Agreement from current revenues available to the City at the time of payment. This Agreement shall be automatically terminated if the City fails to budget sufficient funds to meet the monetary obligations under the Agreement. However, the City’s failure to budget sufficient funds is conditioned on a best efforts attempt by the governing body of the City to obtain and appropriate funds for payment for each of the City’s fiscal years during the term of the Agreement as identified as a commitment of current revenue in Section 271.903 of the Texas Local Government Code. In the event this Agreement is terminated for non-appropriation, the City is prohibited from entering into a booking agreement, entertainment management agreement, or any like agreement with an outside company to perform the services outlined in this Agreement. Further this City is prohibited from self-promoting “National Touring Acts” at the Facility for the remainder of the term of this Agreement.

Article 4 – Fiscal Matters

4. Management Fee Paid by City:

(a) The City shall pay to JAC a yearly entertainment management fee pursuant to the below schedule as follows:

January 1, 2020 – December 31, 2020	\$190,000.00
January 1, 2021 – December 31, 2021	\$190,000.00
January 1, 2022 – December 31, 2022	\$190,000.00
January 1, 2023 – December 31, 2023	\$190,000.00
January 1, 2024 – December 31, 2024	\$190,000.00

(b) Yearly Management fee to be paid in twelve equal monthly installments on or before the 15th day of each month during each year of the Term of this Agreement or any subsequent renewal term.

(c) City shall have no obligation towards the Manager entertainment expenses in excess of the yearly management fee paid by City to JAC.

(d) Manager shall pay City a rebate of \$1.00 per sold ticket from Managers’ Events, to be paid to City on or before the 15th day of each month for the prior month reconciliation. Figures will be based on ticketing audits from each individual event. No rebate whatsoever will be assessed for free tickets or City Events

4.2 Capital Equipment and Capital Improvements:

The obligation to pay for, and authority to perform, direct and supervise capital equipment and capital improvements purchases shall remain with City. JAC shall submit a yearly report no later than November 15 of every calendar year with recommendations for capital equipment and capital improvement purchases to be accomplished during the year. City shall retain the discretion to determine whether and to what level to fund capital equipment and capital improvements purchases to the Facility.

- 4.3 Establishment of Parking Fee for Managers Events:
Manager may at its own discretion implement an event parking fee. Any profit or loss derived from said parking fee shall be property of Manager.
- 4.4 Limitation of JAC Liability:
Notwithstanding any provision herein to the contrary and except for JAC's express indemnification undertakings in Article 6, Manager shall have no obligation to fund any cost, expense or liability with respect to the design, development, construction, repair or rehabilitation of the Facility.

Article 5 -Responsibilities of City

- 5 Payments to Manager:
City covenants and agrees that it shall provide to Manager such sums as it is required to pay to Manager pursuant to Article 4 hereof, as well other covenants contained herein with no further obligation otherwise.
- 5.1 Utilities:
City shall be responsible for the day to day operational costs associated with Facility, including, but not limited to, utilities expenses. All utilities shall remain in the name of City.
- 5.2 Maintenance Engineering Representative:
City shall have a City representative with knowledge of Facility available during Managers' Events.
- 5.3 Cleaning, Parking and Police during Managers' Events:
During the first year of the Agreement (2020) City shall be responsible and pay for all required police, parking personnel and Facility clean up.
- 5.4 Cleaning and Maintenance:
(a) The City is responsible for all day to day cleaning and maintenance of Facility outside of what is required for Managers' Events. The City shall be responsible for providing and supervising all cleaning services to the Facility. All expenses for any maintenance or repair to be the responsibility of the City.
- (b) City shall be responsible for any repair, replacement, and maintenance or alteration of Facility.

Article 6 - Indemnification and Insurance

6. Indemnification:
JAC shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against and all losses arising from any material default or breach by JAC of its

obligations specified herein; provided, however that the foregoing indemnification shall not extend to losses to the extent such losses (i) arise from any breach or default by the City of its obligations under Article 6.1, (ii) are of the type that are or would normally be covered by commercial insurance covering (A) the Facility and its premises and the City's personal property located therein for physical damage or other loss, and (B) business interruption and extra expense, irrespective of the decision of the City to carry or not to carry such insurance, (iii) are caused by or arise out of the services provided by the architects, engineers, and other agents (other than JAC) retained by the City in connection with Capital Equipment and Capital Improvements purchases at the Facility, or (iv) relate to or arise from occupational related diseases of any City employees who provide any services at the Facility (whether as an employee of the City or as a part-time employee of JAC). Notwithstanding the foregoing, to the extent that such occupational disease described in clause (iv) above is demonstrated to be directly related to the work of such City employee at the Facility, then the provisions of clause (iv) shall not apply to the extent thereof, (vii) any obligation or liability for any lost profits, refunds, penalties, indirect and incidental expenses, damages, monetary loss, event-related expenses located at the Facility or intended to be incorporated therein, whether such losses are insured by JAC or whether JAC decides not to insure for such damage and losses (including without limitation damages or losses falling within any insurance deductible), unless such damage and loss is directly the result of City's negligence.

- 6.1 To the extent allowed by law, the City shall indemnify, defend and hold harmless JAC, its partners, officers, agents, and employees from and against any and all losses arising from (i) any material default or breach by the City of its obligations specified herein, (ii) the fact that at any time prior to, as of, or after the commencement of the management term hereunder the Facility has not operated, or the Facility and its premises are not or have not been, in compliance with all laws, including, but not limited to, the ADA, (iii) the fact that prior to, as of, or arising from the premises occupied by the Facility which might, under any law, give rise to liability or which would or may require any "repose," "removal" or "remedial action" (as such terms are defined under CERCLA), (iv) structural defect or unsound operating condition with respect to the Facility or the premises occupied by the Facility prior to, as of or after the commencement of the management term, hereunder, (v) any obligation or liability under or in respect of any contract, agreement or other instrument executed by JAC as agent for the City as authorized herein, (vi) any obligation or liability for physical damage or other loss to any real property and personal property assets located at the Facility or intended to be incorporated therein, whether such assets are insured by the City or whether the City decides not to insure for such damage and losses (including without limitation damages or losses falling within any insurance deductible), unless such damage and loss directly result from JAC's negligence, (vii) any non-compliance with any pre-existing agreement on or prior to the commencement of the management term, or (viii) any act or omission carried out by JAC at or pursuant to the direction or instruction of City, its agents or employees; provided however, that the foregoing indemnification under clauses (i) and (ii) above shall not extend to losses to the extent such losses arise from any default or breach by JAC of its obligations specified herein.

- 6.2 The indemnity obligations of the Parties hereunder shall survive the expiration or termination of this Agreement. Other than lost profits of Manager, neither Party shall be liable or responsible for any indirect, incidental, punitive or special damages, whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each Party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the Party.
- 6.3 City shall be required to maintain, at its cost, Property Insurance and General Liability Insurance. JAC shall be required to maintain, at its cost, General Liability Insurance and Liquor Liability Insurance, naming City as an additional insured on the policies. JAC's General Liability Insurance shall include automobile, employee fidelity, and such other coverage as may be applicable from the nature of the Entertainment Management of the Facility. JAC shall be required to secure workers compensation for the JAC's employees. The cost of said Insurance premiums and deductibles are to be paid by JAC. Copies of the insurance policy and workers' compensation certificate shall be provided to the City and the City shall be named an additional insured.
- 6.4 General Liability Insurance:
JAC shall purchase and maintain, during this Agreement, commercial general liability insurance on a per occurrence and aggregate basis with limits of liability not less than \$1,000,000.00 per occurrence and \$5,000,000.00 aggregate for bodily injury, personal injury, and property damage with a \$4,000,000.00 umbrella.
- 6.5 City shall be named as an additional insured under all of JAC's general liability, property and hazard insurance policies covering or relating to the Facility. Nothing in this Agreement is intended to require JAC to maintain property and hazard insurance covering the premises at the Facility or business interruption insurance covering interruption of operations by or for whatever cause at the Facility.
- 6.6 The terms of all insurance policies referred to in sections 6.3 and 6.4 of the Agreement shall preclude subrogation claims against JAC, the City and their respective partners, members, officers, directors, employees and agents, if the subject policy so permits.

Article 7 -Termination

7. Either Party may terminate this Agreement upon a default by the other Party hereunder. A Party shall be in default hereunder if (i) such Party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such Party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than sixty (60) days after written notice thereof from the other Party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within a sixty (60) day period, the defaulting Party shall not be considered in default if it shall within such sixty (60) day period have commenced with due diligence and dispatch to

cure such default and thereafter completes with dispatch and due diligence the curing of such default.

- 7.1 The Parties may mutually agree one to the other with (180) days written notice to terminate this Agreement without cause.
- 7.2 In the event of termination without cause, the Manager shall be paid as liquidated damages, an amount equal to the management fee payment required in Article 4 for the remainder of this Agreement.

Article 8 -Assignment

- 8 The City's right as the contracting party to assign is absolute and it may assign its interest to any successor in interest that may acquire title to the Facility. Provided, however, that the City has complied with the terms and provisions of its agreements.

Article 9 Miscellaneous

9.1 Representations and Execution:

- (A) As to execution, City represents and warrants to JAC the following:
 - (i) all required approvals have been obtained, and City has full legal right, power and authority to enter into and perform its obligations hereunder;
 - (ii) this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles, and;
 - (iii) the execution and delivery of this Agreement will not violate or cause a breach (with or without notice or the passage of time) under any agreement to which City is a party, including, without limitation, the Agreement.
- (B) JAC represents and warrants to City the following:
 - (i) all required approvals have been obtained, and JAC has full legal right, power and authority to enter into and perform its obligations hereunder, and;
 - (ii) this Agreement has been duly executed and delivered by JAC and constitutes a valid and binding obligation by JAC, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

9.2 Notice:

Any notices required or authorized by this Agreement shall be made by mail, postage prepaid, registered or certified mail, return receipt requested, when mailed to the following addresses or to such other addresses as the parties hereto may designate, in

writing, and in accordance with the provisions hereof, or personal service shall be deemed effective when delivered to:

As to City: City of Forney
 Attn: City Manager
 P.O. Box 826
 101 E. Main Street
 Forney, TX 75126

And

 City of Forney
 Attn: City Attorney
 P.O. Box 826
 101 E. Main Street
 Forney, TX 75126

As to Manager: Eric Ryan
 JAC Management Group Forney, LLC
 100 Federal Plaza East, Suite 975
 Youngstown, Ohio 44503

9.3 Amendment:

Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by both Parties hereto.

9.4 Severability:

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Texas law, but if any provision of this Agreement shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.5 Entire Agreement:

This Agreement, and other documents executed in connection with the Facility, constitutes and expresses the entire agreement of the Parties hereto and no agreements, warranties, representations or covenants not herein expressed shall be binding upon the parties.

9.6 Captions:

Captions appearing before sections and articles in this Agreement have been inserted solely for the purposes of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section or articles to which they pertain.

9.7 Governing Law:

This Agreement shall be governed by and interpreted under the laws of the State of Texas. For all purposes hereunder, jurisdiction and venue shall be accepted and acknowledged by the Parties to the appropriate state or federal court covering Kaufman County, Texas.

9.8 No Partnership or Joint Venture:

Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between City and JAC.

9.9 Boycott of Israel:

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

The signatory executing this contract on behalf of JAC verifies that the company does not boycott Israel and will not boycott Israel during the term of this contract.

9.10 Form 1295:

Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City hereby confirms receipt of the Form 1295 from JAC, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by JAC; and, neither the City nor its consultants have verified such information.

9.11 Non-Waiver:

A failure by either Party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such Party to act with respect to any prior contemporaneous; or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

9.12 Force Majeure:

Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager, and any time periods required for the performance shall be extended accordingly.

9.13 Delivery

Subject to the terms and conditions herein provided, each of the Parties hereto shall execute and deliver such documents as the other Party shall reasonably request in order to consummate and make effective the transaction contemplated by this Agreement; provided, however, that execution and delivery of such documents by such Party shall not result in any additional liability or cost to such Party.

9.14 Good Faith

It is agreed that both Parties shall perform their respective duties under the terms of this Agreement in good faith.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties and is effective as of the _____ of _____, 2019.

THE CITY OF FORNEY, TEXAS

Mary Penn, Mayor

JAC MANAGEMENT GROUP FORNEY, LLC
By Its Principal

Eric Ryan, President