

**FACILITY USAGE AGREEMENT
JOE MACK CAMPBELL PARK**

This Facility Usage Agreement (“Agreement”) is made by and between CHRISTMAS ATTRACTIONS, LLC, an Arkansas limited liability company (“CA”), and the CITY OF JONESBORO (“CITY”), on this ___ day of _____, 20___ (the “Effective Date”).

WHEREAS, CA is a limited liability company organized under the laws of the State of Arkansas with its principal office located in Jonesboro, Arkansas; and

WHEREAS, the CITY is the owner of that certain public park known as “Joe Mack Campbell Park”, and hereafter referred to as the “Facilities”; and

WHEREAS, CA and the CITY desire to enter this agreement for the purpose of evidencing the agreement of the parties with regard to use of the Facilities by CA for the purpose of organizing and conducting three (3) annual Christmas display events which are to be held from approximately the last week of November through the last week of December (subject to the discretion of CA) in years 2019, 2020, and 2021 at the Facilities, to be known as “Christmas at the Park” (hereinafter referred to individually as an “Event”, or collectively, as the “Events”), and the respective obligations of the parties regarding the use and maintenance of the Facilities.

NOW, THEREFORE in consideration of the promises and the reciprocated covenants and obligations contained herein, the parties agree as follows:

I. Term

The term of this Agreement is for a period of three (3) years commencing on the Effective Date and ending January 31, 2022. This Agreement shall be automatically renewed for additional three (3) year terms at the end of the initial term and each extension thereof, unless otherwise terminated pursuant to the terms hereof.

II. Use of Facilities by CA

1) During the period beginning on the first day of the second week of November and ending on February 1st of each year during the Term of this Agreement, CA shall have the primary right to use the Facilities. This period shall be referred to as the “Primary Usage Period.”

2) CA understands and agrees that at times weather conditions may result in CITY denying the use of the Facilities during the Primary Usage Period. CA understands that the Park’s Director has the authority to deny use of the Facilities, but CITY agrees that use will not be unreasonably denied.

3) CITY shall at all times have the right to inspect the Facilities and all CA activities related to the use of the Facilities.

4) CITY shall issue key(s) to CA for use of the Facilities. The keys may not be reproduced or duplicated by CA. CA agrees to return the key(s) to the CITY within two weeks after the conclusion of the term of this Agreement. Upon failure to return any of said keys a fee will be charged for the replacement of keys and locks. CA will be charged a fee of \$25 for each lock that has to be changed as a result of a key that is not returned to the CITY at the end of the season.

5) CA understands and agrees that, except as provided in Article III below, no CITY maintenance equipment will be used by CA to conduct the Events. CA will provide the equipment necessary to operate its own activities and the Events, and in doing so will keep equipment in the spaces designated by the CITY.

6) CA shall maintain their own liability insurance for their program and provide a copy of said insurance policy to the Pool and/or Parks Director prior to the beginning of the Primary Usage Period.

III. Obligations of CITY

CITY agrees to:

- 1) Provide the following maintenance and repairs, to the best of its ability, given staff and budget, in a manner generally equal to normal CITY maintenance and repair of similar CITY recreational facilities:
 - a) Maintain all fences and gates.
 - b) Provide and maintain parking lots.
 - c) Provide secured storage for CA equipment.
 - d) Haul off trash that has been deposited in trash receptacles as needed and delitter the grounds as needed.
 - e) Maintain structural integrity of restrooms and storage buildings, and concrete areas, including repair or replacements of damaged roofs, doors, and windows.
 - f) Maintain all area lighting systems. Repair or replace lights, poles, wiring fuses, transformers and other equipment related to the lighting of the Facilities, excluding the lighting provided by CA in its conduct of the Events.
 - g) Maintain restroom facilities, including cleaning and stocking with toilet tissue.
- 2) Promote the Events in the CITY'S Facebook page. Take calls for information and refer interested parties to CA when necessary.
- 3) Arrange for the availability of utilities (i.e. electricity) with City Water & Light for the Facilities during the Primary Usage Period.

It is understood and agreed the CITY's obligations under this Agreement will be performed as soon as, and to the extent that, budgeted funds are available for performance of its obligations. If CITY is unable to fulfill its obligation due to budget constraints, CA may, but shall not be obligated to perform CITY's duties and shall be entitled to deduct the cost from the payments required to be made by CA to CITY under Article IV. In no event shall CITY be obligated to CA for any monetary damages.

IV. Obligations of CA

CA shall:

- 1) Pay a usage fee to the CITY. The usage fee shall be used to offset the cost for the CITY's obligations for the calendar year. The usage fee shall be equal to Ten and 00/100 percent (10%) of the admission fees, which CA will collect based on the number of vehicles entering the Facilities during the Primary Usage Period in each year of the term of this

Agreement or any extension thereof, provided that, the number of vehicles upon which the usage fee is calculated will not exceed 5,000 vehicles during each year of the term of this Agreement. The initial usage fee shall be due March 1, 2020, with each subsequent usage fee due on or before March 1 of the following year.

- 2) Not make any permanent additions to the Facilities without written permission from the City. This includes, but is not limited to, signs, structures, concrete, and seating.
- 3) Schedule and meet with the Park's Director prior the commencement of each Event to discuss schedule and department guidelines.
- 4) Be responsible for any of its items stolen or damaged, during the Term of this Agreement.
- 5) Not discriminate against any person or persons because of race, color, religion, sex, disability or national origin.
- 6) Not engage in any business on the Facilities or do anything in connection therewith which shall be in violation of any existing state or federal law or municipal ordinances, or use the same in such manner as to constitute a nuisance. CITY reserves the right to exclude any individual or group from the Facilities based on conduct, which it determines in its discretion to be objectionable or contrary to CITY interests. CA hereby consents to the exercise of such authority by CITY over its members, officials and agents.
- 7) Agrees to be solely responsible for any and all damages related to and arising out of CA's use of the Facilities during the term of the Agreement when the Facilities are being used by CA. This includes, but is not limited to, any and all persons associated with CA who use the Facilities during the terms of the Agreement. CA agrees to be solely responsible for all repairs and costs of repairs to the Facilities for any and all damages. Nothing contained herein shall be construed to defeat or diminish CA's right to seek recourse against those persons causing the damage.
- 8) Prior to the commencement of each Event during the Term of this Agreement, CA will provide to the CITY a list of current managers of CA with addresses, phone numbers and e-mail (if applicable). CA agrees to notify CITY of any changes in managers.
- 9) Agrees to pay for electrical services related to the temporary light installation.

V. Default of CA

If CA defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CITY, CA fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CITY may terminate this Agreement.

VI. Default of CITY

a) If the CITY defaults in the performance of any of the covenants, terms, conditions or provisions of this Agreement, and after written notice from CA, CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CA may, at its option perform the

same for the account of CITY and any amount paid or expenses incurred by the CA in the performance thereof shall be deducted from the amounts required to be paid by CA to the CITY under Article IV.

b) Additionally, if the CITY defaults in performance of this Agreement, and after written notice from CA, the CITY fails to cure such default within thirty (30) days after receipt of such notice (or fails to cure with due diligence if the default is of such nature as to require more than 30 days), then CA may terminate this Agreement.

VII. Escape Clause

Either party seeking to terminate this agreement may do so with a written letter of termination to the other party. Upon receipt of the letter of termination this Agreement shall be good for one (1) full year before becoming null and void.

VIII. Assignability and Exclusivity

This Agreement is a privilege for the benefit of CA only and may not be assigned in whole or in part by CA to any other person or entity. Both parties understand that CA's use of the Facilities is nonexclusive, except during the Primary Usage Period.

IX. Notices

Unless otherwise provided herein, any notice, tender or delivery to be given hereunder by either party to the other may be effected by personal delivery with a signed receipt, in writing or by registered or e-mail, or certified mail, postage prepaid, return receipt requested. Notice shall be effective upon signing the date of the signing of the receipt.

CITY:
Danny Kapales; Director
CITY OF JONESBORO
Parks and Recreation
3009 Dan Avenue Jonesboro,
Jonesboro, AR 72401

CA:
Adam Sartin, Manager
CHRISTMAS ATTRACTIONS, LLC
P.O. Box 17285
AR 72403

Any such notice shall be effective upon receipt if delivered in person or upon actual deposit in an official receptacle of the United States Postal Service, if mailed as aforesaid.

X. Miscellaneous Provisions.

- 1) No modification of this Agreement shall be effective unless it is made in writing and is signed by the authorized representative's of the parties hereto.
- 2) This Agreement shall be construed under and in accordance with the laws of the State of Arkansas and venue for any litigation concerning this Agreement shall be in Craighead County, Jonesboro, AR.
- 3) Nothing in this Agreement shall be construed to make the CITY or its respective agents or representatives liable in situations where it is otherwise immune from liability.

- 4) In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- 5) Each party represents to the other that the individual signing this Agreement below has been duly authorized to do so by its respective governing body and that this Agreement is binding and enforceable as to each party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth above.

CHRISTMAS ATTRACTIONS, LLC

By: _____
Name: Adam Sartin
Title: Manager

CITY OF JONESBORO

By: _____
Name: Harold Perrin
Title: Mayor

ATTEST

Donna Jackson, City Clerk, CMC