

STATE OF TEXAS
HARRISON COUNTY

This contract expires 10 days from the date of receipt by USER if not executed.

**Marshall Independent School District
Facility Use Agreement**

This Use Agreement is made and entered into this ____ day of _____, 2_____, by and between Marshall Independent School District ("MISD") and _____, ("USER"), whose principle place of residence/business is _____, telephone: _____, and fax number: _____.

Whereas MISD owns and operates, or lawfully controls, MISD Facilities ("FACILITY") described below, and USER desires to use said FACILITY, MISD agrees to make said FACILITY and no other available to USER at the date(s) and time(s) and for the purposes referenced below and no other.

Facility: _____

Date(s): _____

Time(s): _____

Purposes of Use: _____

("EVENT").

In consideration for being permitted to use the FACILITY for the stated EVENT, the USER Agrees to pay the following fees and abide by the following conditions:

ARTICLE 1: USE FEE AND OTHER PAYMENTS

1.1 USE FEE - For use of the FACILITY, the USER agrees to pay MISD the sum of:

\$ _____ .00

This USE FEE includes charges for existing electric lights, heat and water as may be needed for presentation of the EVENT, but only in places and amounts as now installed in the FACILITY.

1.2 OPERATING EXPENSES – In addition to the USE FEE described above, the USER will be responsible for paying all OPERATING EXPENSES, if any, of the EVENT. OPERATING EXPENSES include, but are not limited to, the following: other fees, stage hands, ticket sellers, ticket takers, door guards, cleanup, police, parking, parking control, ushers and special stage security. A schedule of estimated expenses is as follows:

Facility Administrator	\$ _____
Security	\$ _____
Setup/Cleanup (min 1 hr before and 1 hr after event)	\$ _____
Other (specify)	\$ _____
 TOTAL ESTIMATED OPERATING EXPENSES:	 \$ _____

This estimate is for budgeting purposes. Actual expenses shall be charged at the conclusion of the EVENT.

- 1.3 DEPOSIT - An advance deposit of 50% of the USE FEE and of the TOTAL ESTIMATED OPERATING EXPENSES, is required for the reservation of the FACILITY and must be submitted with and become a part of this Agreement. The DEPOSIT is equal to the amount of \$ _____ .00 and is non-refundable except in accordance with section 3.6.
- 1.4 DUE - All amounts due under this Agreement, other than the DEPOSIT, are due and payable at the immediate conclusion of the EVENT, and no later than two days after the EVENT.
- 1.5 TAXES - MISD shall not be responsible for the payment of any taxes arising out of or connected with the use of the FACILITY by the USER. The USER shall be responsible and be required to pay upon demand to MISD an amount sufficient to discharge all taxes which may arise from or in connection with the USER's use of the FACILITY.
- 1.6 SECURITY OF PAYMENT - All Use Fees, expenses, charges and other sums to be paid by the USER, whether due or not due, shall be and constitute a first lien on all of the USER's property that is in or upon the FACILITY at the time of any default under this

agreement by the USER, the USER hereby mortgages or pledges said property for the purpose of securing the payment of all rents, charges and other sums herein provided to be paid. In the event of such default MISD may take possession of any and all of said property, including box office, receipts and hold the same until such default has been remedied, and if not remedied or satisfied within ten days of such default, MISD may advertise said property for sale and upon such sale shall apply the proceeds there from to the satisfaction of any amounts due MISD. If there are sums remaining after the satisfaction of any amounts due MISD, the said sums will be paid to USER. This remedy is not exclusive and MISD may, at its discretion, pursue any appropriate remedy to recover all or any deficits remaining of the above mentioned rents, charges, and other sums.

ARTICLE 2: TERMS & CONDITIONS

- 2.1 **INGRESS/EGRESS** - All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the premises shall be kept unobstructed by the USER and shall not be used for any purpose other than ingress or egress to and from the premises by the USER.
- 2.2 **CONCESSIONS AND MERCHANDISE** - All rights to sell concessions at the EVENT are reserved by MISD, and the USER will not be permitted to sell any beverages, confections, tobacco, or food for consumption at the FACILITY, except as specifically granted to in this or additional written agreements. The sale and distribution of alcohol to the general public is strictly prohibited. All rights to sell merchandise at the EVENT are reserved by MISD, and the USER will not be permitted to sell merchandise, programs, souvenirs, or other personal property unless expressly agreed to in this or additional written agreements.
- 2.3 **DELIVERY AND SET-UP** - The USER agrees to have a person present for load in and load out. MISD will not sign for any items shipped for the USER nor take any responsibility for them unless prior arrangements have been agreed upon.
- 2.4 **SAFETY COMPLIANCE** - The USER agrees to use and occupy the FACILITY in accordance with all MISD policies, regulations, rules, and practices and with all applicable municipal, state, and federal laws, including but not limited to fire codes. MISD assumes no responsibility whatsoever, for any property placed in said FACILITY by USER, its employees, its agents, its guests, its patrons, and its invitees, and MISD is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the use of said FACILITY under this Agreement.
- 2.5 **PARTICIPANTS AND ATTENDEES** - The USER is responsible for providing all necessary and appropriate safety instruction to all participants and attendees at USER's activity. The USER is responsible for any and all damages to buildings, grounds, fields, and equipment caused by participants and attendees. If the use of the FACILITY is open to any non-members, then no one shall be denied the equal privileges and enjoyment of

having free and open access to the FACILITY on the basis of race, color, national origin, religion, age, veteran's status, sex, or disability.

- 2.6 SECURITY - All watchmen or other protective service desired by the USER must be arranged for by special agreement with MISD and the USER is responsible for all such costs. MISD requires security for all events having an audience of 75 or greater.
- 2.7 MANAGEMENT RIGHTS - It is understood and agreed that MISD hereby reserves the right to control and manage the FACILITY and to enforce all necessary and proper rules for the management and operation of the same. MISD, its employees, and its agents shall have free access at all times to all space occupied by the USER. Design of the staging is to be approved by MISD.
- 2.8 ABANDONED PROPERTY - Any property left in the FACILITY shall, after a period of ten days from the last day of use hereunder, be deemed abandoned and shall become property of MISD to be disposed of or utilized at MISD's sole discretion.
- 2.9 REPAIRS - The USER shall be responsible for all damage to buildings, grounds, fields, and equipment incident to the USER's use of said FACILITY. USER shall make no temporary or permanent modifications to the FACILITY without the prior written consent of MISD. USER shall not operate trucks, forklifts and other non-passenger vehicles outside of areas designated by MISD. An amount equal to the Deposit shall be withheld until such time as the costs of repairs, if any, have been determined. The amount will be refunded, less any reasonable expenses, within ten business days.
- 2.10 CANCELLATION OR POSTPONEMENT OF CONTRACT - USER agrees that cancellation or postponement of the EVENT, unless permitted by MISD in writing, may be considered by MISD as breach of the Agreement and all deposits, costs, advances, use fees, and charges shall be due upon demand by MISD from the USER.
- 2.11 TERMINATION - MISD may terminate this agreement at any time in its discretion. If MISD terminates because USER has violated the terms of this agreement, or because participants or attendees have violated laws or MISD policies, the USER is obligated to make full payment of all fees under this agreement. Otherwise, termination by MISD shall result in a pro rata refund of the applicable fee, based on the portion of the use period that was actually used but less any expenses incurred by MISD.

ARTICLE 3: INDEMNIFICATION, HOLD HARMLESS, AND INSURANCE

- 3.1 INDEMNIFICATION - The USER shall indemnify and save harmless MISD, its officers, its agents, and its employees from all loss, cost, and expense arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by any one whomsoever, by reason of the use or occupancy of the FACILITY, whether such use is authorized or not, or by any act or omission of USER or any of its officers, agents, employees, guests, patrons, or invitees. USER shall pay for

any and all damage to the property of MISD, or loss or theft of such property, done or caused by such persons.

- 3.2 **HOLD HARMLESS** - The USER expressly waives any and all claims for compensation for any and all losses or damage sustained by reason of any defect, deficiency, failure or impairment of the water supply system, drainage system or electrical system leading to or on the demise of the FACILITY. In the event the FACILITY or any part thereof is damaged by fire or any other peril including, but not limited to strikes, failures of utilities, or any act of God, which, in the judgment of MISD renders the fulfillment of this Agreement by MISD impossible, the USER hereby expressly releases, discharges, and will save harmless MISD, its officers, its agents, and its employees from any and all demands, claims, actions and causes of actions arising out of any of the causes aforesaid.
- 3.3 **COPYRIGHT FEES, ROYALTIES AND OTHER LICENSES** - If any material, composition or name to be used or performed under this AGREEMENT is copyrighted, the USER shall be responsible for securing, before using or employing such material, composition or name, the assent in writing, of the owner or licensee of such copyright. The USER agrees to be fully responsible for any fees, royalties and licensees in connection therewith. Furthermore, the USER shall indemnify and save MISD harmless from any and all claims, expenses or suits for copyright infringements which may arise from the performance of this Agreement.
- 3.4 **DOCUMENT LIABILITY** - The USER certifies and attests that it has a valid, properly executed, and compatible contract with the performers whose services form the basis for its desire to use the FACILITY. Upon request of MISD, USER shall submit a copy of the performers' contract within 5 business days after the request.
- 3.5 **INSURANCE** - User shall purchase and maintain in full force and effect, with underwriters approved by MISD the following policies of insurance, which will be primary as to any other valid and existing policies of MISD. All such policies shall name MISD as additional insureds, but only to the extent of User's indemnification obligations set forth in this Agreement and shall waive all rights of subrogation by the underwriters against all members of MISD.
- 3.5a - Workers Compensation & Employers Liability Insurance including \$1,000,000 for coverage "B"
- 3.5b - Commercial General Liability Insurance- \$1,000,000 including products and completed operations coverage's
- 3.5c - Automobile Liability Insurance - owned, non-owned and hired vehicles - \$1,000,000
- 3.5d - Umbrella - no less than \$5,000,000 each accident and in the aggregate above the coverage provided in 3.5a through 3.5c above
- 3.5e - Property insurance covering User's property

- 3.5f - Accidents - in the event any member of the User (including User's property or vehicles or any third party) is involved in any loss, injury or damage, such incident will be reported immediately to MISD
- 3.6 PROOF OF INSURANCE - A certificate evidencing the insurance as required under this Agreement shall be delivered to MISD no later than 5 days prior to the start of the EVENT. Each such certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without giving ten days written notice to MISD. Providing and maintaining insurance coverage is a material term of this contract.
- 3.6 FORCE MAJEURE - If the FACILITY is rendered unsuitable for the conduct of the EVENT by reason of Force Majeure, MISD and the USER are released from their obligations as they pertain to the EVENT. MISD shall not be responsible for any damages sustained by USER but USER shall be entitled to a refund of the DEPOSIT. Force Majeure shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of MISD.

ARTICLE 4: MISCELLANEOUS

- 4.1 RESERVATION - All matters not authorized expressly by the terms of this contract shall be reserved to the discretion of MISD. The USER shall be subject to the terms and conditions of the Rules and Regulations of the FACILITY, a copy of which shall be provided by MISD to USER.
- 4.2 PERSONAL - This Agreement is personal, and the USER shall not assign this Agreement nor sublet the FACILITY without the prior written consent of MISD.
- 4.3 SUCCESSORS AND ASSIGNS - This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 4.4 RELATIONSHIP OF THE PARTIES - It is agreed that the USER, its promoter, its members, its agents, and its employees are independent contractors and have no employment relationship, no joint venture nor partnership with MISD with respect to the subject matter of this Agreement.
- 4.5 WHOLE AGREEMENT - This writing contains the whole and complete agreement between MISD and USER
- 4.6 SEVERABILITY - The terms of this Agreement are severable such that if one or more provisions are declared illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

4.7 GOVERNING LAW - This Agreement shall be governed by and construed under and in accordance with the laws of the State of Texas, without regard to its conflicts of law principles, the choice of law being the laws of the State of Texas. Venue for any lawsuit arising from or incident to this Agreement shall be in Marshall, Harrison County, Texas.

User Authorized Signature

Marshall ISD Representative

Title: _____

Title: _____

Date: _____

Date: _____

State of Texas}

County of Harrison}

Sworn to and subscribed before me by the said on this the _____ day of _____,
20____.

Commission expires: _____

Notary Public in and for the State of Texas

For office use only:

_____ Approved _____ Denied

_____ Confirmation Number

_____ Availability Confirmed with _____

_____ Notification of Approval/Denial Given to _____