



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY	
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory	
Council Meeting Date:	8/26/13
Department:	Parks and Recreation
Department Head	Amy Fortenberry
Agenda Coordinator (include phone #): Susan Berger (7255)	

CAPTION

To approve a License Agreement with Live Nation Worldwide Inc., for the promotion and production of a music festival at Oak Point Park and Nature Preserve and authorizing the City Manager or his designee to execute all necessary documents.

FINANCIAL SUMMARY

NOT APPLICABLE
 OPERATING EXPENSE
 REVENUE
 CIP

FISCAL YEAR: 2013-14	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget	0	0	500,000	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	-500,000	0
BALANCE	0	0	0	0

FUND(S): **GENERAL**

COMMENTS: Funding in the amount of \$500,000 is included in the FY 2013-14 City Manager's Recommended Budget for this event. Funding is contingent on City Council approval of the FY 2013-14 City Manager's Recommended Budget. In addition to the \$500,000 payment to Live Nation Worldwide Inc., the City will provide in-kind services with a value not to exceed \$125,000 annually through FY 2017-18.

STRATEGIC PLAN GOAL: Providing funding to Live Nation Worldwide Inc. relates to the City's Goals of Financially Strong City with Service Excellence and Strong Local Economy.

SUMMARY OF ITEM

This License Agreement with Live Nation Worldwide Inc., will result in the production of a multi-day, multi-act music festival at Oak Point Park and Nature Preserve. The festival will serve the citizens, stimulate the economy, provide entertainment to the public and promote the City of Plano as a destination.

The City will provide Live Nation with a one time payment of \$500,000 to secure quality headline act(s) for the initial year to be held in May 2014. Organizers expect festival attendance to be around 20,000 for the first year with the expectation that the event will grow to 50,000-70,000 over time. A neighborhood engagement plan will be enacted to minimize impact on the surrounding residents and receive their input on the event as it is being planned.

The City will provide in-kind services with a value not to exceed \$125,000 annually. These may include the following services: police, security, traffic control, fire and rescue services, emergency services, personnel, parks maintenance and support, and rental fees for Plano Centre.



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Live Nation will be responsible for all expenses, except those mentioned above. This includes, but is not limited to: all artists fees, promotions, ticketing, event infrastructure set up and tear down, event staffing, food and beverage costs, etc. Live Nation will retain 100% of all revenues.

Live Nation will be required to obtain a special event permit as outlined in the City of Plano's Code of Ordinances. The permit process will ensure that proper planning and safety measures have been addressed.

List of Supporting Documents:

Location Map

License Agreement

Other Departments, Boards, Commissions or Agencies

Community Engagement Plan

May 2014 Music Festival at Oak Point Park

City's Role: Working cooperatively with Live Nation, the City will take the lead in notifying and engaging the community about the festival and in receiving /processing citizen complaints. The City will coordinate a post-event evaluation sessions with key stakeholders, including Live Nation, to improve the festival experience year to year.

Engagement Outline:

City will host two (2) "Come and Go" meetings at Oak Point Park pavilion with invitations mailed to all residents living within the following neighborhoods (dates TBD):

- Oak Point
- Stony Hollow
- Ranch Estates
- Timber Brook
- Timber Brook West
- Trails of Glenwood
- Royal Oak
- Hills of Spring Creek
- Windmill Country
- Wind Meadow

Come-and-Go meeting objectives:

1. Discuss goals of the festivals.
2. Provide an opportunity for residents to see the festival footprint map and absorb the reality of the festival
3. Answer residents' questions about pending timeline, improvements and potential reactions to crowds, increased traffic, atypical noise levels, and any other festival-generated experiences that are outside the usual environment surrounding these neighborhoods.
4. Generate a list of residents' comments and develop an appropriate mitigation plan

Host one (1) "Presentation" (date and location TBD):

This presentation meeting will summarize the comments received from residents during the Come-and-Go meetings and outline steps to sensibly address those concerns moving forward. All residents living within the neighborhoods listed above will receive an invitation by mail.

Staff will be available and accepting of invitations to attend annual HOA meetings to provide information about the event and respond to comments and questions.

LICENSE AGREEMENT
FOR PROMOTION AND PRODUCTION OF
MUSIC FESTIVAL AT
OAK POINT PARK AND NATURE PRESERVE

This Agreement is made and entered into by and between the CITY OF PLANO TEXAS, a home-rule municipal corporation of the State of Texas, (hereinafter called "CITY") and LIVE NATION WORLDWIDE INC., a Delaware corporation, (hereinafter called "LIVE NATION");

WHEREAS, the CITY is the owner of Oak Point Park and Nature Preserve ("Park"), shown on Exhibit "A" incorporated herein by reference as if set forth in full, and Plano Centre, located at 2000 E. Spring Creek Parkway, Plano Texas 75074 ("Plano Centre"); and

WHEREAS, the CITY Council finds that a multi-day, multi-act music festival at the Park will serve the citizens, stimulate the economy, provide entertainment to the public and promote the CITY as a destination; and

WHEREAS, CITY has determined that it is in the public interest to enter into this Agreement with LIVE NATION to promote and produce a multi-day musical festival at the Park with quality programming from a cross-section of musical genres and artistic performers (the "Agreement"); and

WHEREAS, LIVE NATION shall enter into a separate license agreement for use of the Plano Centre for the ancillary activities associated with promoting and producing a multi-day musical festival.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and Agreements contained herein, and other good and valuable consideration, the receipt and

sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

Article I
Scope of Use

1.01. Permitted Use. Subject to the terms and conditions herein and a special event permit obtained by LIVE NATION as required by Section 15-5 of the CITY'S Code of Ordinances and Section 4.01 herein ("Special Event Permit"), the CITY grants to LIVE NATION a license to use the Park to promote and produce at least one (1) multi-day, multi-act musical festival which shall be conducted for a minimum of two consecutive days per calendar year (the "Festival") for the term of this Agreement, together with customary ancillary uses in connection therewith, including, without limitation, the set up and removal of equipment and temporary improvements such as stages, dressing areas, concession facilities, portable restrooms, kiosks for merchandise, medical, security and box office, lighting and sound rigging), "load-in" and "load-out" activities, providing on-site concessions (including service and consumption of alcohol beverages), catering, merchandise sales and promotion, sponsorships (including, without limitation, the sale of event, stage and festival area naming rights), parking, VIP areas, interactive displays, games, rides and amusements, temporary medical and security facilities and services, broadcasting, recording, and ticketing/box office activities. Use of the Park by LIVE NATION shall be limited to the Festival, and the CITY shall not permit the Park or any part thereof to be used or occupied for any unrelated purpose. CITY offices at the Park are excluded from use by LIVE NATION for the Festival. The CITY shall grant to LIVE NATION a license to use the Plano Centre by a separate, mutually agreed upon license agreement for ancillary activities of the Festival.

1.02. Festival Dates. LIVE NATION shall conduct the Festival annually during the Term of this Agreement on a weekend in the month of May on dates to be determined by mutual agreement of the parties upon LIVE NATION submitting an application for a Special Event Permit with the CITY pursuant to Section 4.01 herein. LIVE NATION agrees that the Festival shall not be scheduled on the third weekend in May unless otherwise agreed by LIVE NATION and CITY.

1.03. Term of Agreement. The initial term of this Agreement shall be for a period of two (2) years commencing upon the effective date hereof provided however, the parties shall have the right and option to extend the term hereof by four (4) additional two (2) year terms by written letter Agreement executed on or before sixty (60) days prior to the expiration of the term in which the parties are operating.

1.04. Exclusivity. The CITY agrees that it will not allow any third party to book, promote or produce any multi-day, multi-act, music festival at the Park during the term of this Agreement. LIVE NATION agrees that it will not book, promote or produce any multi-day, multi-act music festival within a seventy-five (75) mile radius of the Park during the term of this Agreement without the written consent of CITY, provided, however, that LIVE NATION shall not be restricted in any manner from booking, promoting or producing (a) any events of any type at venues within such radius for which LIVE NATION or its affiliates has an ownership, lease, operating, booking, or equity interest¹, including, without limitation, the venues currently known as the Gexa Energy Pavilion, the House of Blues Dallas and the Southside Ballroom; and (b)

¹ As reported by LIVE NATION'S publicly traded parent company, Live Nation Entertainment, Inc. ("LNE"), in its Form 10-K. In the event that during the Term of this Agreement, LNE ceases reporting such venues such that they can be identified for purposes of this Section 1.04, the parties will negotiate in good faith as to an alternate means of identifying such venues. To that end, the parties acknowledge and agree that this Section 1.04 is not intended to restrict LIVE NATION'S (or its affiliates') day-to-day concert business or the operation of its venues.

packaged, multi-act tours (whether one-day or multi-day) such as, but not limited, to, Warped Tour, Mayhem and Uproar. Nothing in this Agreement shall prohibit the CITY from booking and promoting entertainment for CITY sponsored events during the term of this Agreement, excluding any multi-day music festival without the written consent of LIVE NATION.

Article II Payment

2.01. One-Time Contribution by City. CITY shall make a one-time contribution of Five Hundred Thousand Dollars (\$500,000) for the 2014 Festival toward the procurement of a headlining performance artist(s) to be pre-approved by the CITY pursuant to Section 3.03 herein. Such amount shall be payable to LIVE NATION no later than thirty (30) days after LIVE NATION produces the Festival subject to the terms of this Agreement in the year 2014. CITY shall not make a payment to LIVE NATION in any renewal years for the Festival.

2.02. In-kind Services. During the initial term of this Agreement, and for any option exercised after the initial term but not to exceed the 5th year from the effective date of this Agreement, pursuant to Section 1.03 herein, CITY shall provide in-kind services for each Festival in an amount not to exceed One Hundred Twenty-five Thousand Dollars (\$125,000) annually. Such services shall be mutually agreed upon in writing in advance of each Festival pursuant to the Special Event Permit as required by Section 4.01 herein and may include the following: police, security, traffic control, fire and rescue services, emergency services, personnel, parks maintenance and support, and rental fees for Plano Centre. In-kind services contributed by the CITY shall cease after five (5) years from the effective date of this Agreement unless otherwise mutually agreed in writing by the parties.

Article III
Independent Contractor

3.01. Independent Contractor. LIVE NATION covenants and agrees that LIVE NATION is an independent contractor and not an officer, agent, servant or employee of CITY; that as between CITY and LIVE NATION, LIVE NATION shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between CITY and LIVE NATION, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and LIVE NATION.

3.02. Contract Negotiations. LIVE NATION shall have exclusive authority, subject only to the provisions and limitations set forth in this Agreement, to negotiate all contracts or agreements including, but not limited to, the contracts and agreements with suppliers, exhibitors, entertainment artists, concessionaires, advertisers, television and radio media and other media, sponsors and parties relating to the Festival. All such contracts and agreements of any kind or nature whatsoever shall be negotiated and executed by LIVE NATION in its name and shall not be contracts or obligations of CITY.

3.03. City Approval of Artists. LIVE NATION shall notify the CITY as to all entertainment artists with whom LIVE NATION is engaged in material negotiations to perform as a headliner at the Festival. CITY, through the CITY Parks and Recreation Director or her designee (the "Director"), and LIVE NATION shall mutually agree on the headliners to perform at the Festival. LIVE NATION shall use commercially reasonable efforts to begin notifying the CITY through the Director of its proposed headlining artists by October 1 of the year preceding

the Festival year and update the Director periodically as negotiations progress. Failure of the Director to respond to any request for confirmation within forty eight (48) hours of notice from LIVE NATION shall be deemed an approval of the proposed artist. All contracts or agreements of any kind or nature entered into by LIVE NATION with the entertainment artists booked to perform at the Festival shall specifically contain language which prohibits the entertainment artists from engaging in nudity, illegal acts, and/or obscene behavior.

Article IV
Live Nation Obligations/Rights

4.01. Special Event Permit. Pursuant to Section 15-5 of the CITY'S Code of Ordinances, LIVE NATION shall obtain a Special Event Permit from the CITY. LIVE NATION shall submit an application for a Special Event Permit on or before one hundred and eighty (180) days prior to each Festival and obtain a Special Event Permit on or before thirty (30) days prior to each Festival. LIVE NATION shall address the details of the ancillary activities necessary for the Festival pursuant to the Special Events process including, but not limited to, neighborhood notification(s), an emergency response plan, traffic control, transportation, parking (including off-site, parking at non-city owned locations), set up and removal of equipment, medical services, security, temporary improvements such as stages, dressing areas, concession facilities, portable restrooms, kiosks for merchandise, box office, lighting, games, rides, and amusements. Failure to apply for a Special Event Permit on or before one hundred and eighty (180) days prior to a Festival and/or failure to obtain a Special Event Permit on or before thirty (30) days prior to a Festival shall be a breach of this Agreement, subject to the cure provisions, and if not cured subject to termination, as set forth in Section 8.01(c) herein. Notwithstanding the foregoing, CITY agrees to provide reasonable assistance in obtaining any such permit or license when requested by LIVE NATION. CITY's Special Events Supervisor

(presently Karen Williams) will be designated as the CITY representative to provide assistance to LIVE NATION on all such permitting, licensing or other CITY issues.

4.02. Other Permits and Licenses. LIVE NATION, prior to commencement of any activities pursuant to the provisions of this Agreement and at its sole expense, shall obtain all necessary permissions, permits, approvals and licenses, including a license for use of the Plano Centre (if LIVE NATION in its sole discretion chooses to utilize the Plano Centre), which are required to conduct the Festival including, but not limited to, building permits, copyright or music licenses, and concessions-related permits, including any license required for alcohol service and sales. Notwithstanding the foregoing, CITY agrees to provide reasonable assistance in obtaining any such CITY issued permit when requested by LIVE NATION.

4.03 Provision of Necessary Personnel. In addition to any requirements of the Special Event Permit, LIVE NATION shall also provide all personnel and equipment needed to provide the services herein, at its own expense, including all personnel and equipment necessary for scheduling, conducting and safeguarding the Festival, including, but not limited to: ticket sellers; ticket takers; ushers; sound technicians and stage hands; security and emergency medical personnel; personnel required for the installation and removal of staging or sound and/or lighting which is to be utilized for the Festival or any other equipment of any type or nature which is needed for the Festival. Certain services, personnel and equipment to be used herein may be provided by the CITY, at CITY's sole discretion and expense pursuant to Section 2.02 herein.

4.04. "Tear-Down" and Clean-Up. LIVE NATION shall be responsible for clean-up at the Park property upon completion of the Festival. Clean-up shall include, but not be limited to, removal of all debris, equipment, staging, tables, chairs and any other Festival or Festival-related equipment. In all cases, trash/litter clean-up shall be completed within twenty four (24) hours

after the completion of the Festival; equipment, staging, tables, chairs and any other Festival or Festival-related equipment shall be completed within ninety-six (96) hours of the Festival unless otherwise agreed in writing by the parties. If the clean-up is not completed within the allotted time the CITY shall request in writing that LIVE NATION complete the clean-up. If LIVE NATION fails to then undertake the clean-up within twenty-four (24) hours of CITY's request, the CITY shall perform the clean-up and shall bill the actual cost of clean-up to LIVE NATION. Said costs shall be paid by LIVE NATION within thirty (30) days of receipt of invoice from the CITY.

4.05. Responsibility for Damage. If any portion of the Park used for the Festival during the term of this Agreement shall be damaged by the act, default or negligence of LIVE NATION, or of LIVE NATION'S agents, employees, contractors, sub-contractors, patrons, guests, or any person admitted to the Park by LIVE NATION, LIVE NATION will pay to CITY, within thirty (30) days of written invoice, such actual and documented sum as shall be reasonably necessary to restore the Park to its condition as received by LIVE NATION at the beginning of move-in for the Festival, excluding normal wear and tear. In connection with the repairs and/or restoration referenced herein, designated representatives of the parties shall conduct a walk-through of pertinent areas of the Park prior to move-in for the Festival (but no earlier than ninety-six (96) hours prior to move-in for the Festival), and again after the Festival (but no later than on or before ninety-six (96) hours subsequent to completion of the Festival). During each walk-through, the parties will assess and identify, as applicable, pre-existing conditions and any damages, if any, that may have occurred during LIVE NATION's use, and will consult and agree in good faith as to what, if any repair or restoration costs will be paid for by LIVE NATION. In no event shall LIVE NATION be responsible to the CITY for damages assessed from any pre-

existing conditions or damage caused solely by the CITY, its employees, agents, contractors or subcontractors or any property damages not identified within seven (7) days of the Festival or prior to set-up for the next event at the Park has begun, whichever is earlier. As between LIVE NATION and CITY, LIVE NATION hereby assumes full responsibility for the acts and conduct of all persons admitted to the Park by LIVE NATION, or to any portion of the Park with the consent of LIVE NATION'S agents or employees or any person acting for or on behalf of LIVE NATION, excluding any person, contractor, sub-contractor, employee or agent of the CITY performing any services in or around the Park solely at the CITY's direction including those whose function may be related to the Festival.

4.06. Ejection from Property. During each Festival, LIVE NATION shall have the right to terminate any on-stage performance, eject or cause to be ejected from the Park any person or persons, including entertainment artists, engaging in nudity, obscene/lewd behavior or illegal acts.

4.07. Alterations, Additions, Improvements and Fencing. LIVE NATION shall not make any alterations, additions or improvements to the Park or any part thereof without the prior written approval of CITY. LIVE NATION shall acknowledge in writing prior to performing any work for each Festival that it agrees that it has inspected the premises of the Park and accepts the premises as is, unless otherwise agreed to in writing by CITY and LIVE NATION.

4.08. Risk Management. Each party shall report safety deficiencies or any defects it notices on the premises promptly to the other party in connection with the Festival and shall use reasonable efforts to cooperate with the other party in the investigation of accidents occurring on the Park premises in connection with the Festival.

4.09. Ticketing. LIVE NATION shall have the exclusive right to coordinate, conduct and manage all ticket sales, reporting, accounting and inventory for the Festival(s) with the ticketing service provider(s) of its choice. Owner shall not enter into any Agreement with any third party ticketing service provider during the term of the Agreement that will interfere with LIVE NATION'S rights herein. LIVE NATION shall maintain ownership of its ticket buyer database with respect to the Festival(s).

4.10. Festival-related Revenues and Expenses. As between CITY and LIVE NATION, LIVE NATION shall retain one hundred percent (100%) of all revenues generated in connection with the Festival(s), including, without limitation, ticket sales, VIP revenues, vendor fees, parking revenues, ticket commissions and rebates, advertising commissions, sponsorship revenues, merchandise revenues, broadcasting or recording revenues and concessions revenues. As between CITY and LIVE NATION, LIVE NATION shall be solely responsible for the payment of all Festival-related expenses, except as otherwise provided in Section 2.02 above.

4.11. Sound Limits. LIVE NATION agrees not to exceed a maximum sound limit of 103 dB, A-weighted, measured at the mix position of the main stage.

Article V City Obligations/Rights

5.01. Site Preparation. Prior to each Festival, CITY shall make the Park ready for load-in of equipment, a crowd capacity of at least twenty thousand (20,000) persons and shall have completed the following:

- (a) Mowing and manicuring of Festival lawn area.
- (b) Fertilization of Festival lawn area.
- (c) Insect control treatment in appropriate areas of the Park.
- (d) Removal of any standing water deeper than three inches, if any.

5.02. City's Right to Enter and Inspect. CITY and its authorized agents and employees shall have the right to enter the Park at any and all times for the purpose of inspection and observation of LIVE NATION's operation to assure compliance with this Agreement, any CITY issued permits, and the law.

5.03. Ejection from Property. CITY at all times reserves the right to eject or cause to be ejected from the Park any person or persons, including entertainment artists, violating any laws or compromising the health, safety and welfare of the CITY or other patrons. Neither CITY nor any of its officers, agents or employees shall be liable in any manner to LIVE NATION or its officers, agents, or employees for any damages which may be sustained by LIVE NATION through the exercise of this right by CITY.

Article VI Promotional Materials

6.01. Promotional Materials. LIVE NATION shall use the CITY'S name, where appropriate and feasible, in advertising or promotional materials and social media postings related to the Festival. LIVE NATION will provide a link on the Festival website and social media page connecting to the CITY'S website at www.plano.gov and the CITY'S Convention and Visitors Bureau website at www.visitplano.com regarding the Festival.

6.02. Intellectual Property. CITY and LIVE NATION acknowledge certain names, trademarks, service marks, copyrights and other intellectual property ("Mark(s)") are the sole and exclusive property of each of the parties. CITY expressly acknowledges and agrees that the to-be-determined name of the Festival, in graphic or textual form, whether registered or not, shall be owned by LIVE NATION and deemed a LIVE NATION Mark. LIVE NATION hereby grants to CITY a limited, non-exclusive, non-transferable, non-assignable, U.S. royalty-free license to use LIVE NATION'S Marks as provided by Live Nation solely for purposes of any pre-

approved marketing and promotional activities conducted by CITY, if any. All uses of the Marks by CITY in connection with its obligations hereunder shall bear appropriate trademark notices as prescribed by LIVE NATION. CITY hereby authorizes LIVE NATION to use the CITY'S Marks in conjunction with the Festival solely as authorized by Section 2-1 of the CITY's Code of Ordinances. Both parties agree that it will not use, register or attempt to register in any jurisdiction or other otherwise appropriate or adopt the Marks or any name, mark or logo that is confusingly similar to the Marks of the other party. Except to the extent required to perform the obligations set forth in this Agreement, the parties shall not have the right to use in any way or reproduce for any purpose the Marks of the other party without their respective prior written consent. Upon termination of this Agreement both parties shall cease such use of each other's Marks.

6.03. Ancillary Rights. CITY shall have the right to request that LIVE NATION permit radio, television and film personnel to film and record portions of the Festival(s) for purposes of press, publicity and/or news programs as requested by CITY without any further consideration paid to LIVE NATION, subject to any such personnel following all LIVE NATION procedures, rules and regulations for press, including application for appropriate credentials, and limitations on access as determined by LIVE NATION and its press team. Furthermore, LIVE NATION or its designees shall have the sole right to photograph, film, videotape, broadcast, webcast, record or otherwise mechanically reproduce the Festival(s) and its/their related activities, including, without limitation, the period beginning with move-in and ending with move-out (each, a "Media Property") on a live or delayed basis at the Property, subject to obtaining all necessary rights and clearances. Further, as to any performance footage of the Festival, LIVE NATION shall have the exclusive right to utilize said performance footage, and CITY shall not attempt to broadcast,

exhibit, televise, webcast or otherwise mechanically reproduce the live performance footage, except for limited footage permissible under this section for news, press or publicity purposes. LIVE NATION shall not broadcast or disseminate any Media Property regarding the Festival or the CITY containing obscene or illegal acts.

**Article VII
Insurance/Indemnification**

7.01. Insurance. LIVE NATION agrees to meet all insurance requirements as set forth on Exhibit "B", which is attached hereto and incorporated herein. LIVE NATION shall provide an appropriate Certificate of Insurance, prior to commencing work on the Festival each year which reflects that LIVE NATION has met the CITY's insurance requirements.

7.02. **RELEASE AND INDEMNIFICATION.**

LIVE NATION AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE, INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS (INCLUDING PATENT, COPYRIGHT AND TRADEMARK INFRINGEMENT) OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY LIVE NATION'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF LIVE NATION, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND

THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH LIVE NATION IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

LIVE NATION AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND THE CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF LIVE NATION'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF LIVE NATION'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. LIVE NATION SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF LIVE NATION FAILS TO PROMPTLY RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, THE CITY SHALL HAVE THE RIGHT TO

RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND LIVE NATION SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

THE INDEMNIFICATION HEREIN SURVIVES THE TERMINATION OF THE CONTRACT AND/OR DISSOLUTION OF THIS AGREEMENT.

**Article VIII
Termination**

8.01. Termination. This Agreement terminates upon any one or more of the following:

(a) By expiration of the term or any extension thereof and where no defaults have occurred; or

(b) If LIVE NATION elects to terminate this Agreement by written notice to the CITY no later than January 1st of the second year of any two year term, provided, however, that this termination right shall not be exercisable for the 2014 Festival;

(c) a party defaults or breaches any of the terms or conditions of this Agreement, including failure to timely apply for and/or obtain a Special Event Permit pursuant to Section 4.01 herein, and such default or breach is not cured within thirty (30) days after written notice thereof by the non-defaulting party unless a longer period is provided. Any default under this provision and right to recover any claims, refunds, damages and/or expenses shall survive the termination of the Agreement. The City Manager is authorized on behalf of the CITY to send notice of default and to terminate this Agreement for any default that is not cured.

**Article IX
Notices**

9.01. Notices. Any notices required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified

mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the CITY:

City of Plano, Texas
Attention: Parks and Recreation Director
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

If intended for LIVE NATION:

Live Nation
Legal Department – North America Concerts
9348 Civic Center Drive
Beverly Hills, California 90210
Attn: Jennifer Rawlings, Esq.

With a courtesy copy to:

Live Nation
Legal Department – North American Festivals
5022 Bienville Street
New Orleans, Louisiana 70119
Attn: J. Don Kelly Jr., Esq.

Either party may at any time, by giving ten (10) days written notice, designate any other address in the substitution of the foregoing address to which the notice or communication shall be given.

Article X Miscellaneous

10.01. No Transfer, Assignment or Subletting. LIVE NATION shall not sublet the subject premises or any part thereof or allow the same to be used or occupied by any person or

for any other use than that herein specified, nor assign said Agreement nor transfer, assign or in any manner convey any of the rights or privileges herein granted without the written consent of CITY. Neither this Agreement nor the rights herein granted shall be assignable or transferable by any process or proceeding in any Court, or by attachment, execution, proceedings, insolvency, or bankruptcy either voluntary or involuntary or receivership proceedings.

10.02. Liability For Acts of God. CITY shall not be responsible for its failure to make the premises available or to provide the facilities and services described herein where such performance is rendered impossible and impractical due to acts of God or arising from conditions in the premises which create a danger to the health, safety and welfare of the public or any other cause outside of the control of CITY. LIVE NATION shall not be deemed to have defaulted or failed to perform hereunder if its failure (including, without limitation, any determination to cancel or alter the format of the Festival) is caused by an event or events beyond its control including, without limitation, acts of God, acts of Government, weather, death, injury or illness of headlining talent and/or their immediate family, explosions, strikes or labor disputes, terrorist acts, acts of military authority, riots or civil unrest, conditions in the Park which create a danger to the health, safety and welfare of the public, or because the Park is otherwise unfit for its intended use.

10.03. Notice of Bankruptcy. In the event LIVE NATION files for bankruptcy, whether involuntarily or voluntary, Company shall provide written notice to the CITY within thirty (30) business days of such event.

10.04. Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement.

10.05. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

10.06. Compliance with Law. LIVE NATION, at LIVE NATION'S expense, shall promptly comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction, affecting or applicable to conducting the Festival.

10.07. Amendment. This Agreement may only be amended by the mutual written Agreement of the parties.

10.08. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.09. Recitals. The recitals to this Agreement are incorporated herein.

10.10. Authorized to Bind. The persons who execute their signatures to this Agreement represent and agree that they are authorized to sign and bind their respective parties to all of the terms and conditions contained herein.

10.11. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

10.12. Effective Date. This Agreement shall be effective from and after the last date of signatory hereto.

[Signature page to follow]

CITY OF PLANO, TEXAS, a home-rule
municipal corporation

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY

LIVE NATION WORLDWIDE INC., a
Delaware corporation

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2013, by **BRUCE D. GLASSCOCK**, City Manager, of the **CITY OF PLANO, TEXAS**, a Home-Rule Municipal Corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

EXHIBIT "A"

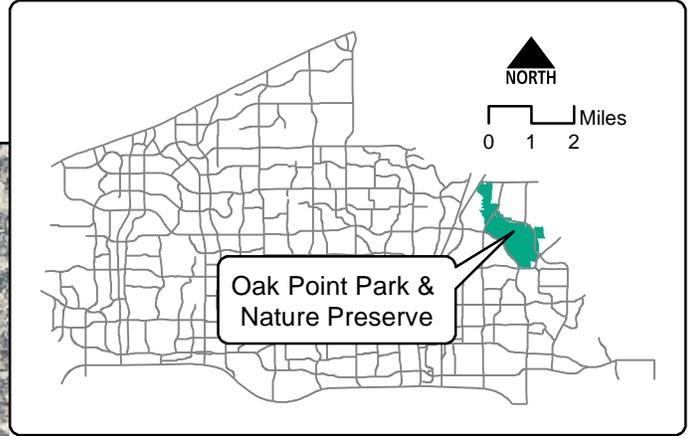


Exhibit "B"

LIVE NATION shall provide the City a certificate of insurance evidencing the coverage's and coverage provisions identified herein. LIVE NATION shall require that subcontractors providing work at the Park have coverage commensurate with the type of services provided.

All insurance companies must be authorized by the Texas Department of Insurance to transact business in the State of Texas, must be reasonably acceptable to the City of Plano and be placed with an insurer possessing an A-VII A. M. Best rating or better.

Listed below are the types and amounts of insurance required. The City reserves the right to amend or require additional types and higher limits of coverage or provisions provided that such additional types and limits must be reviewed and approved by LIVE NATION in writing as an amendment to the Agreement no later than sixty days prior to each Festival.

Commercial General Liability Insurance

Commercial general liability insurance shall be written on an ISO occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, products-complete operations, personal and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The City, the City Council and its members, the City's agents, officers, directors and employees shall be included as an additional insured under the commercial general liability policy as respects the liability assumed herein by LIVE NATION.

\$2,000,000 Limit per Occurrence/\$4,000,000 Aggregate
\$2,000,000 Limit for Personal/Advertising Injury and Products/Completed Operations. Such limits may be satisfied by a combination of commercial general liability and umbrella/excess liability insurance.

Commercial Automobile Liability

LIVE NATION shall maintain business automobile liability insurance with a limit of not less than \$1,000,000 each accident or Combined Single Limit.

Such automobile liability insurance shall cover liability arising out of any auto (including owned, hired, and non-owned automobiles). LIVE NATION waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by LIVE NATION pursuant to this section or under any applicable automobile physical damage coverage.

Workers' Compensation & Employer Liability

LIVE NATION shall maintain workers' compensation insurance in the amounts required by appropriate state workers compensation statutes. The employer's liability limit shall not be less than \$500,000.

LIVE NATION waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under LIVE NATION's workers' compensation and employer's liability. LIVE NATION must cause a waiver of subrogation to be effected under its workers' compensation coverage.

Sole Proprietors and companies with no employees may be exempt from this requirement.

Liquor Liability Coverage (Required if LIVE NATION sells and/or serves alcoholic beverages)

\$1,000,000 Limit and Aggregate

General Requirements Applicable to All Insurance

1. LIVE NATION shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. LIVE NATION agrees that the insurance requirements specified herein do not reduce the liability LIVE NATION has assumed in any indemnification/hold harmless section of the contract.
3. Coverage shall be on a primary basis and non-contributory with any other insurance coverage and/or self-insurance carried by City to the extent of the liability assumed herein by LIVE NATION.
4. LIVE NATION is responsible for providing the City a minimum of 30 days' notice of a material change or voluntary cancellation of insurance coverage required under this contract and notice within 10 days of any notice of termination no matter the cause.

Evidence of Insurance Required

Prior to commencement of work, and thereafter upon renewal or replacement of coverage required by this contract, LIVE NATION shall furnish City a Certificate(s) of Insurance (COI) on a form approved by the Texas Department of Insurance and signed by an authorized representative of each insurer.

The COI shall list the City of Plano, Risk Management Division, 7501 A Independence Parkway, Plano, Texas, 75025 in the Certificate Holder Section