



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:		November 23, 2015			
Department:		Parks & Recreation			
Department Head		Amy Fortenberry			
Agenda Coordinator (include phone #): Sandra Dority ext. 7235					
CAPTION					
To approve a License Agreement with Metro Broadcasters – Texas, 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					
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP					
FISCAL YEAR:	2015-16	Prior Year (CIP Only)	Current Year	Future Years	TOTALS
Budget		0	0	0	0
Encumbered/Expended Amount		0	0	0	0
This Item		0	0	0	0
BALANCE		0	0	0	0
FUND(S): N/A					
<p>COMMENTS: This item has no immediate financial impact; however, an agenda item approving the City of Plano's commitment of \$100,000 annually to Metro Broadcasters - Texas Inc., as well as \$85,000 of in-kind services is expected for consideration by the City Council in December 2015.</p> <p>STRATEGIC PLAN GOAL: Examining future music entertainment events relates to the City's Goal of Financially Strong City with Service Excellence.</p>					
SUMMARY OF ITEM					
<p>This License Agreement with Metro Broadcasters – Texas, 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 Metro Broadcasters – Texas, Inc. with a \$100,000 annually in advance of the festival to secure quality headline act(s). The City of Plano will be responsible for food and beverage and parking and will receive 100% of the revenue derived from these sources. Also, the City will retain 66% of sponsorships secured by the City and will receive 33% of those secured by Metro Broadcasters – Texas, Inc.</p>					



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Metro Broadcasters – Texas, Inc. will provide all other festival related services and will retain the revenues associated with those services. Likewise, they will be responsible for all expenses, including but not limited to all artists fees, promotions, ticketing, event infrastructure set up and tear down, event staffing, etc. For each year of the term, if the City fails to recover the \$100,000 that is advanced for the event, Metro Broadcasters – Texas, Inc., shall reimburse the City up to the \$100,000 from the event net proceeds once they net \$65,000.

Organizers expect festival attendance to be around 10,000 for the first year. 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 \$85,000 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 Event Center.

Metro Broadcasters - Texas, Inc. 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.

Funding is available, with Council's approval of this item, from the Convention and Tourism Fund. A separate agenda item will follow at a future Council meeting to authorize the expenditure.

List of Supporting Documents:
Location Map
License Agreement

Other Departments, Boards, Commissions or Agencies

LICENSE AGREEMENT
FOR PROMOTION AND PRODUCTION OF
TEXAS MUSIC REVOLUTION 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 Metro Broadcasters – Texas, Inc., a Texas corporation (hereinafter called "KHYI");

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, located at 5901 Los Rios Blvd, Plano Texas 75074; and

WHEREAS, the CITY Council finds that a multi-day, multi-act country 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 KHYI to host the KHYI-produced TEXAS MUSIC REVOLUTION music festival at the Park with quality programming from a selection of American and country music genres and artistic performers (the "Agreement"); and

WHEREAS, KHYI shall, if deemed necessary, enter into a separate license agreement for use of the Plano Event Center for the ancillary activities associated with the Texas Music Revolution 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 KHYI 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 KHYI a license to use the Park to promote and produce the Texas Music Revolution, a multi-day, multi-act musical festival featuring a variety of American and country music acts and artists 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, and kiosks for merchandise; medical services; 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 KHYI 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. If necessary, the CITY shall grant to KHYI a license to use the Plano Event Center by a separate, mutually agreed upon license agreement for ancillary activities of the Festival.

1.02. Festival Dates. KHYI shall conduct the Festival annually during the Term of this Agreement on a weekend in the month of March or April on dates to be determined by mutual agreement of the parties upon KHYI submitting an application for a Special Event Permit with the CITY pursuant to Section 4.01 herein

1.03. Term of Agreement. The initial term of this Agreement shall be for a period of five (5) 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. KHYI agrees that it will not book 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. Nothing in this Agreement shall prohibit the CITY from booking and promoting entertainment for CITY sponsored events during the term of this Agreement.

Article II Payment

2.01. Annual Advance by City. CITY shall make an annual advance of One Hundred Thousand Dollars (\$100,000) for each year of the term of this Agreement—whether the initial term or any extension thereof—toward the procurement of a headlining performance artist(s) to be pre-approved by the CITY pursuant to Section 3.03 herein. The initial advance shall be payable to KHYI no later than thirty (30) days after the ratification of this Agreement. In each subsequent year of the term, the advance shall be made payable to KHYI no later than November 1.

2.02. In-kind Services. During the term of this Agreement (whether the initial term or any extension thereof pursuant to Section 1.03 herein), CITY shall annually provide in-kind services for each Festival in an amount not to exceed Eighty-Five Thousand Dollars (\$85,000). 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 parking rental fees for Plano Event Center.

Article III Independent Contractor

3.01. Independent Contractor. KHYI covenants and agrees that KHYI is an independent contractor and not an officer, agent, servant or employee of CITY; that as between CITY and KHYI, KHYI 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 KHYI, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between CITY and KHYI.

3.02. Contract Negotiations. KHYI 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 KHYI in its name and shall not be contracts or obligations of CITY.

3.03. City Approval of Artists. KHYI shall notify the CITY as to all entertainment artists with whom KHYI is engaged in material negotiations to perform as a headliner at the Festival. CITY, through the CITY Parks and Recreation Director or his/her designee (the "Director"), and KHYI shall mutually agree on the headliners to perform at the Festival. KHYI 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, except for the 2016 Festival for which KHYI shall attempt to begin such notification by December 1, 2015, and shall 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 KHYI shall be deemed an approval of the proposed artist. All contracts or agreements of any kind or nature entered into by KHYI 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 KHYI Obligations/Rights

4.01. Special Event Permit. Pursuant to Section 15-5 of the CITY'S Code of Ordinances, KHYI shall obtain a Special Event Permit from the CITY. KHYI shall submit an application for a Special Event Permit on or before one hundred and eighty (180) days prior to each Festival, except for the 2016 Festival when KHYI shall submit an application ninety (90) days prior to the Festival, and obtain a Special Event Permit on or before thirty (30) days prior to each Festival. KHYI 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 and 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, except as provided for the 2016 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 the Agreement shall be subject to termination as set forth in Section 8.01 herein. Notwithstanding the foregoing, CITY agrees to provide reasonable assistance in obtaining any such permit or license when requested by KHYI. CITY's Special Events Supervisor will be designated as the CITY representative to provide assistance to KHYI on all such permitting, licensing or other CITY issues.

4.02. Other Permits and Licenses. KHYI, 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 Event Center (if KHYI, in its sole discretion, chooses to utilize the Plano Event Center), which are required to conduct the Festival including, but not limited to, building permits, copyright or music licenses. Notwithstanding the foregoing, CITY agrees to provide reasonable assistance in obtaining any such CITY issued permit when requested by KHYI.

4.03 Provision of Necessary Personnel. In addition to any requirements of the Special Event Permit, KHYI 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 provided via the provision of in-kind services of CITY, as referenced in section 2.02, by and through the provision of police officers and emergency medical technicians employed by CITY; and 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. KHYI 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; clean-up of equipment, staging, tables, chairs and any other Festival or Festival-related equipment shall be completed within ninety-six (96) hours after the completion 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 KHYI complete the clean-up. If KHYI 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 KHYI. Said costs shall be paid by KHYI 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 KHYI, or of KHYI'S agents, employees, contractors, sub-contractors, patrons, guests, or any person admitted to the Park by KHYI, KHYI 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 KHYI 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 damages, if any, that may have occurred

during KHYI's use, and will consult and agree in good faith as to what, if any, repair or restoration costs will be paid for by KHYI. In no event shall KHYI 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 completion of the Festival or prior to set-up for the next event at the Park has begun, whichever is earlier. As between KHYI and CITY, KHYI hereby assumes full responsibility for the acts and conduct of all persons admitted to the Park by KHYI, or to any portion of the Park with the consent of KHYI'S agents or employees or any person acting for or on behalf of KHYI, 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, KHYI 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 and Improvements. KHYI shall not make any alterations, additions or improvements to the Park or any part thereof without the prior written approval of CITY. KHYI 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 KHYI.

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. KHYI 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. City shall not enter into any Agreement with any third party ticketing service provider during the term of the Agreement that will interfere with KHYI'S rights herein. KHYI shall maintain ownership of its ticket buyer database with respect to the Festival(s). KHYI shall provide all CITY employees working the event with one (1) complimentary admission to the event; KHYI shall provide to CITY fifty (50) VIP tickets for CITY dignitaries and invited guests to be used in a CITY-provided VIP zone within the confines of the Park which VIP zone shall be erected so as not to interfere with the Festival or KHYI's operations.

4.10. Festival-related Revenues and Expenses. As between CITY and KHYI, the CITY shall receive: One Hundred percent (100%) of all revenue generated by sale of concessions, including food and beverage; Sixty-Six percent (66%) of all cash sponsorships generated and/or secured by the CITY or authorized CITY agents; Thirty-Three percent (33%) of all cash sponsorships generated by KHYI and/or authorized KHYI agents; and One Hundred percent (100%) of all revenue generated through sale of parking passes (collectively, the "City Income Streams"). For each year of the term, if the CITY receives an amount equal to or greater than the \$100,000 Annual Advance it has provided KHYI pursuant to Section 2.01 based upon the City Income Streams, KHYI shall retain one hundred percent (100%) of all revenues generated in connection with ticket sales. For each year of the term, if the CITY does not receive an amount equal or greater than the \$100,000 Annual Advance it has provided KHYI pursuant to Section 2.01

based on the City Income Streams, KHYI shall reimburse the CITY for the difference between the amount received by the CITY based upon City Income Streams and the \$100,000 Annual Advance until the Annual Advance has been repaid to the City. Provided, however, KHYI's obligation to reimburse the City shall be limited to the net proceeds in excess of \$65,000.00 KHYI has received from the operation of that year's Festival. If and only if the net proceeds in excess of \$65,000.00 KHYI has received from the operation of that year's Festival are less than the amount required to reimburse the City for the difference between the City Income Streams and the \$100,000 Annual Advance, the City may, at its option, review and audit KHYI's financial records associated with the operation of the Festival to ensure that the appropriate monies were reimbursed to the City. As between CITY and KHYI, KHYI 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. KHYI agrees not to exceed a maximum sound limit of 103 dB, A-weighted, measured at the mix position of all stages.

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 ten thousand (10,000) 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 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 KHYI'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 KHYI or its officers, agents, or employees for any damages which may be sustained by KHYI through the exercise of this right by CITY.

Article VI Promotional Materials

6.01. Promotional Materials. KHYI shall use the CITY'S name, where appropriate and feasible, in advertising or promotional materials and social media postings related to the Festival. KHYI 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 (Visit Plano) website at www.visitplano.com regarding the Festival.

6.02. Intellectual Property. CITY and KHYI 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 name "Texas Music Revolution", in graphic or textual form, whether registered or not, shall be owned by KHYI and deemed a KHYI Mark. KHYI hereby grants to CITY a limited, non-exclusive, non-transferable, non-assignable, U.S. royalty-free license to use KHYI'S Marks as provided by KHYI 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 KHYI. CITY hereby authorizes KHYI

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 KHYI 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 KHYI, subject to any such personnel following all KHYI procedures, rules and regulations for press, including application for appropriate credentials, and limitations on access as determined by KHYI and its press team. Furthermore, KHYI 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, KHYI 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. KHYI shall not broadcast or disseminate any Media Property regarding the Festival or the CITY containing obscene or illegal acts, and a clause

prohibiting obscene or illegal acts shall be inserted by KHYI into the agreement of each artist contracted to perform or provide other services at the Festival.

**Article VII
Insurance/Indemnification**

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

7.02. **RELEASE AND INDEMNIFICATION.**

KHYI 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 KHYI'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 KHYI, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH KHYI 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.

KHYI 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, IT IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF KHYI'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF KHYI'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. KHYI 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 KHYI 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 KHYI 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) 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 by mutual written agreement of the parties. 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 or his/her designee 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
P.O. Box 860358
Plano, TX 75086-0358

If intended for KHYI:

KHYI
12225 Greenville Ave. #890
Dallas, TX 75243
Attn: Joshua Jones

With a courtesy copy to:
KHYI
12225 Greenville Ave. #890
Dallas, TX 75243
Attn: Morgan Gill

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. KHYI 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 or deemed to have breached or defaulted on this Agreement 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, which determination shall be in the sole discretion of the City. KHYI 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 directly impacting the festival at the park including, without limitation, acts of God; acts of Government; severe 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 KHYI files for bankruptcy, whether involuntarily or voluntary, KHYI shall provide written notice to the CITY within thirty (30) business days of such event. Such a filing shall be an event of default under Section 8.01.

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. KHYI, at KHYI'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.

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

Bruce D. Glasscock, CITY MANAGER

Date: _____

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

METRO BROADCASTERS – TEXAS,
INC.

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGMENTS

STATE OF TEXAS §

§

COUNTY OF COLLIN §

 This instrument was acknowledged before me on the _____ day of _____, 2015, 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

STATE OF §

§

COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of _____, 2015, by _____, of Metro Broadcasters – Texas, Inc., a _____ corporation, on behalf of such corporation.

Notary Public, State of

Exhibit 'A'
Location Map
Oak Point Park Special Events Area
2801 E Spring Creek Pkwy, Plano, TX 75074



Exhibit "B"

KHYI shall provide the City a certificate of insurance evidencing the coverage's and coverage provisions identified herein. KHYI 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 KHYI 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 KHYI.

\$1,000,000 Limit per Occurrence 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

KHYI 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). KHYI waives all rights against City and its agents, officers, directors and employees for recovery by the commercial automobile liability obtained by KHYI pursuant to this section or under any applicable automobile physical damage coverage.

Workers' Compensation & Employer Liability

KHYI 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 \$1,000,000.

KHYI waives all rights against City, the City Council and its members, the City's agents, officers, directors and employees for recovery of damages under KHYI's workers' compensation and employer's liability. KHYI 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 KHYI sells and/or serves alcoholic beverages)

\$1,000,000 Limit and Aggregate

General Requirements Applicable to All Insurance

1. KHYI shall obtain and maintain the minimum insurance coverage set forth in this section during the entire contract period.
2. KHYI agrees that the insurance requirements specified herein do not reduce the liability KHYI 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 KHYI.
4. KHYI 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, KHYI 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, 1520 Avenue K, Plano, Texas, 75074 in the Certificate Holder Section