

ABILENE CIVIC CENTER RENTAL AGREEMENT

This Agreement is made this the ___ day of ___ between the City of Abilene, Texas, a municipal corporation of Taylor and Jones Counties (hereinafter "CITY"), here acting by and through its Civic Center Manager (hereinafter "MANAGER") and ___ (hereinafter "LESSEE").

WITNESSETH, that for and in consideration of the promises and agreements set forth herein, it is mutually agreed that:

A. GENERAL PROVISIONS

1. Term: CITY does hereby grant unto LESSEE the right to use and occupy the following described space and premises located in the City of Abilene, Taylor County, Texas, to wit: ___ to be used for the purpose of ___ and for no other without the express prior written approval of the MANAGER for a term commencing ___ on the ___ day of ___ and terminating at ___ the ___ day of ___ together with the right to access to and limited use thereof for ___ hours prior to the first hour stated above and ___ hours after the last hour stated, for the purpose of putting in equipment, preparing the premises and equipment for use, and packing up and removing equipment afterwards. CITY agrees to provide only available facilities, which are a permanent part of the Abilene Civic Center, adequate janitorial service in advance, available house lighting, heating or air conditioning as necessary. Any and all other facilities or equipment which LESSEE should desire to install shall be done at the sole expense of LESSEE, but only after LESSEE has received express prior written approval of the CITY.

2. Payment: LESSEE hereby covenants and agrees to pay to CITY, at MANAGER's office in the Abilene Civic Center, for the use of said premises:

RENTAL

FOR: ADDITIONAL FEES/SERVICES - SEE STATEMENT MAILED AFTER EVENT.

DEPOSIT: LESSEE shall deposit with the MANAGER the sum of:

in the form of cash or cashier's check payable to CITY to guarantee payment for any damages to the premises, failure of performer to appear or any other harm caused by LESSEE to CITY by reason of this Agreement. The amount shown shall not limit the amount of any claim by CITY against LESSEE in the event actual damages exceed such amount. Payment of the total amount of such rent and additional charges, shall be made as follows: A). One-half in cash or cashier's check payable to CITY upon the signing of this Agreement and the other half in cash or cashier's check prior to the first performance, or as otherwise specified by the MANAGER. B). LESSEE further covenants and agrees to pay CITY on demand any and all sums which may be due CITY for additional services, accommodations or materials furnished or loaned LESSEE. C). CITY reserves the right to refuse use of the Civic Center unless and until full payment is made as required under this paragraph.

3. Venue: Venue for any legal proceeding stemming from this Agreement shall be in the City of Abilene, Taylor County, Texas.
4. Conflict of Laws: This Agreement shall be deemed to be made and shall be construed in accordance with the laws of the State of Texas. All ordinances and resolutions of the City of Abilene and regulations established by Civic Abilene, Inc. (the non-profit corporation established by CITY to formulate policy for Civic Center) for rental and use of the Civic Center are hereby expressly made a part of this Agreement.
5. Amendment of Modification: This agreement constitutes the entire agreement of the parties exercising it, and cannot be amended except in writing executed by the parties hereto.
6. Assignment of Agreement: LESSEE shall not assign this Agreement, or any part thereof, nor suffer any use of said premises, other than herein specified, without the express prior written approval of the MANAGER.
7. Discrimination Prohibited: In light of CITY's ownership of the Civic Center premises, LESSEE agrees that any discrimination by LESSEE, its agents, officers or employees, on account of race, color, religion, sex, national origin, or handicapped status in the use of or admission to said premises is prohibited.

B. RIGHTS AND RESPONSIBILITIES OF LESSEE:

1. Employees of LESSEE: Rental of the Civic Center at the rates provided shall not entitle LESSEE to any personal service by CITY in connection with the staging of any event. LESSEE shall hire and pay the salaries of all other employees required in connection with LESSEE's attraction including the salaries and services of all stage employees, light operators, projectionists, ticket taker's, ushers, doormen and guards. LESSEE agrees and understands that its negotiations with any such potential employees, labor or theatrical unions shall be separate from and constitute no part of the Agreement. LESSEE's employees, including ushers, gatemen, ticket takers and all other employees, are subject to rules and procedures established by CITY or the MANAGER. Accordingly, CITY reserves the right to establish rules to be followed by LESSEE's employees or persons contracting with LESSEE to enforce CITY's ordinances or rules established by MANAGER or Civic Abilene, Inc. when the circumstances so require, and also reserves the right to remove from the premises any and all such employees of LESSEE, and the right, with its officers, agents, employees or members of the Abilene Police Department, to remove from the Civic Center premises any other objectionable person(s). In the event that this authority is exercised, LESSEE agrees to waive any and all claims for damages against CITY and its officers, agents and employees on account thereof.
2. Stagehands: LESSEE understands that backstage or staging equipment and fixtures, including lighting, wiring, ropes, scaffolds, weights, props, etc., present hazardous conditions LESSEE agrees to employ as the MANAGER requires, City of Abilene/Civic Center Stagehands or other qualified personnel expressly approved by the MANAGER. The MANAGER will be the sole judge of the qualifications of persons employed as stagehands, lighting operators or in any other position that in the MANAGER's opinion requires special training, skills, or experience.
3. Use or Sale of Liquor: LESSEE will not sell or allow beer, wine, or any liquors of alcoholic content to be sold, given away or used upon the premises without the express prior written approval of the MANAGER, and then only in accordance with the rules and regulations promulgated by CITY and the MANAGER and in compliance with the laws of the State of Texas regulating the sale and use of alcoholic beverages.
4. Compliance with Law: LESSEE shall comply with all laws of the United States, of the State of Texas, and all ordinances of the CITY as well as rules and requirements of the Police and Fire Departments or other authorities of the CITY. LESSEE agrees to obtain, pay for, and provide proof of all necessary permits and licenses, including the necessary licenses required by any music performing rights organization, and will not do, nor suffer to be done, anything on said premises during the term of this Agreement in violation of any such laws, ordinances, rules or requirements. LESSEE shall immediately desist from and likewise prevent others on the premises from violating the laws, ordinances, rules and requirements cited above when LESSEE is informed by CITY or MANAGER of such violations or otherwise learns of such violations.
5. Capacity of Premises: LESSEE shall not admit to any performances a greater number of persons than the lesser of: (1) the authorized maximum seating capacity of the portion of the premises or; (2) the number of persons that can freely and safely move about in said area under the circumstances. The decision of the MANAGER as to the appropriate capacity of the leased premises shall be final.
6. Box Office Report: LESSEE shall deliver to the MANAGER, a certified box office report of all tickets sold, and other admissions on the day or night of the performance. In the event that no admission is charged by LESSEE, an estimate of the number of persons in attendance delivered the same day or night of the occasion will suffice.
7. Failure to Take Possession: If LESSEE, being entitled to possession hereunder shall fail to take possession of or use the premises, without the express prior written approval of the MANAGER, no rent refund shall be made and any payment made to the CITY shall be taken by CITY and the full rent called for by this Agreement, including any disbursements or expenses incurred by CITY in connection therewith shall be payable by LESSEE to CITY. In the event that CITY has agreed to make advance ticket sales for LESSEE, and LESSEE cancels with more than forty percent (40%) of the seats sold (based on capacity of the leased premises), CITY reserves the right to keep ten percent (10%) of the deposit to cover the cost of ticket sales. The right to keep ten percent (10%) of the deposit shall be in addition to, or in lieu of requiring full payment of the rent, at the discretion of the MANAGER. The MANAGER's decision to retain any portion of the deposit or to release the LESSEE from the requirement of paying the rent in full shall be final.
8. Alterations to Premises: LESSEE will not cause or permit any nails or other things to be driven into any portion of the building, nor any signs to be affixed either to the exterior thereof, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the building or the furnishings or equipment thereof, nor do, nor permit to be done anything which will damage or change the finish or appearance of the building or the furnishings thereof. LESSEE shall pay the cost of repairing any and all injury and damage which may be done to the building or any of the fixtures, furniture or furnishings thereof by any act of LESSEE including patrons of the attraction or function for which LESSEE is renting the premises described above. It is expressly agreed that the MANAGER shall determine whether any damage has been done, the amount thereof and the reasonable cost of repairing or replacing the same and whether the damage is of the type which, under the terms of this agreement, LESSEE is to be held responsible. The decision of the MANAGER shall be final unless within ten (10) days of the MANAGER's decision, LESSEE gives notice to the MANAGER of his decision to appeal the MANAGER's decision to the Assistant Director of Community Services for the CITY. In his notice to the MANAGER of his appeal, LESSEE shall state fully the grounds upon which he considers the decision of the MANAGER to be incorrect and no further objections other than those so stated shall be considered by the Assistant Director of Community Services. The decision of the Assistant Director of Community Services shall be final.
9. Cost of Restoring Premises: If in connection with the purpose of use for which LESSEE is renting the premises any or all of the permanent seats, any portion of the stage or floor or other portion of the building, walls or furniture are moved or removed, LESSEE agrees to pay the cost of replacing the same and putting them back in the original place and condition.
10. Protection of Premises: LESSEE shall not bring or permit anyone else to bring into the leased premises or keep therein anything that will increase the fire hazard or the rate of insurance on the building or any property therein. LESSEE shall not bring or permit any person to bring into said building or premises any animals, or any other property of any kind nor shall LESSEE place or put any decorations within the premises without the express prior written approval of the MANAGER. CITY reserves the right at any time to require LESSEE to remove from the premises any animals, furniture, wiring, exhibits or other things placed on or within the premises without the express prior written approval of the MANAGER.

11. Advertisements on Premises: LESSEE shall not post or exhibit (or allow others to post or exhibit) signs, advertisements, show bills, lithographs, posters, or cards, inside or outside of the premises of the Civic Center, without the express prior written approval of the MANAGER, and even then will post only such signs or other posters as relate directly to the performance(s) to be given at the Civic Center. LESSEE shall take down and remove promptly all signs, advertisements, etc., after such performances or any such advertisements the MANAGER finds objectionable. LESSEE shall not calculate, publish, or cause to be published any advertisement, ticket, placard, or other written or printed matter wherein the name CITY is mentioned or referred to without first having obtained the express prior written approval of the MANAGER.

12. INDEMNIFICATION:

A. Definitions

For the purpose of this section the following definitions apply:

"City" shall mean all officers, agents and employees of Civic Abilene, Inc. or the City of Abilene.

"Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.

"Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to injury or damage to any property or right; injury, damage, or death to any person or entity; attorneys fees, witness fees, expert witness fees and expenses,; and all other costs and expenses of litigation

"Lessee" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.

"Lessee's employees" shall mean any employees, officers, agents, subcontractors, licensee and invitees of Lessee.

"Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

"Proven" shall mean that a court of competent jurisdiction has entered a final unappealable judgment on a claim adjudging an entity or person liable for a monetary judgment.

"Sole negligence" shall mean negligence of a party that is unshared with the fault of any other person or entity.

B. Indemnity

The Lessee must indemnify, hold harmless, and defend the City from and against liability for any claims arising out of the Lessee's work and activities conducted in connection with this Contract.

The Lessee is an independent contractor and is not, with respect to its acts or omissions, an agent or employee of the City.

Lessee must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of Lessee's employees while in the vicinity where the work is being done. The City is not liable or responsible for the negligence or intentional acts or omissions of the Lessee or Lessee's employees.

The City assumes no responsibility or liability for damages which are directly or indirectly attributable to premise defects. Responsibility for all such defects is expressly assumed by the Lessee.

The City and Lessee must provide the other prompt and timely notice of any covered event which in any way affects or might affect the Lessee or City. The City has the right to compromise and defend the same to the extent of its own interests.

BOTH CITY AND LESSEE EXPRESSLY INTEND THIS CONTRACT'S INDEMNITY PROVISION TO REQUIRE LESSEE TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE WHILE CITY IS PARTICIPATING IN THIS CONTRACT, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE DAMAGES. THIS CONTRACT'S INDEMNITY PROVISION DOES NOT APPLY TO ANY CLAIM WHERE DAMAGE IS PROVEN TO RESULT FROM THE SOLE NEGLIGENCE OF THE CITY.

(LESSEE'S INITIALS)

13. Insurance Coverage: LESSEE agrees to provide insurance for this Agreement by obtaining public liability insurance in the amounts set forth below. All insurance policies shall be subject to the examination and approval of the City's Risk Management Office for their adequacy as to form, content, type of protection and insurance company. LESSEE shall furnish the City Secretary, Certificates of Insurance or copies of the policies, plainly evidencing the required insurance prior to commencement of activities under this Agreement. Adequate insurance coverage as defined here shall mean comprehensive general liability insurance covering those activities contemplated by this Agreement, with minimum coverage limits as follows:

"TYPE"

Comprehensive General (Public) Liability - to include

(but not limited to) the following:

- A) Premises/Operation
- B) Independent Contractors
- C) Personal Injury
- D) Products/Completed Operations
- E) Contractual Liability

"AMOUNT"

Bodily Injury:

\$250,000 per person

\$500,000 per occurrence

Property Damage:

\$100,000 per occurrence

OR

\$500,000 Combined Single Limit for bodily injury

and property damage

The actual required insurance coverage with respect to the amount and type of coverage will be determined on a case-by-case basis but in no event will the amount approved be less than the amounts listed above.

14. Insurance Requirements Subject to Change: The preceding minimum amounts notwithstanding, CITY and Civic Abilene, Inc. reserve the right to increase the minimum required insurance effective thirty (30) days after written notice is sent to LESSEE. It is further agreed that such insurance naming CITY and Civic Abilene, Inc. as additional insured shall be deemed primary insurance and not contributing with any other third party liability insurance available to CITY or Civic Abilene, Inc.

15. Additional Insurance Requirements: With respect to the above insurance, LESSEE agrees to:

- have CITY and Civic Abilene, Inc. named as an additional insured.

- provide for a Waiver of Subrogation in favor of CITY and Civic Abilene, Inc.

- provide within the policy for thirty (30) days written notice to the CITY of any material change, termination or cancellation.

C. RIGHTS AND RESPONSIBILITIES OF CITY:

1. Damage to Premises Affecting Performance: In the event of above described premise is destroyed, wholly or in part, by fire or any other cause, or if any other casualty or unforeseen occurrence renders the fulfillment of this Agreement by CITY impossible, then the term of this Agreement shall end and LESSEE shall be liable to pay rent only up to the time of such termination. LESSEE hereby waives and releases any claim for damages or compensation on account of such termination.

2. Electricity and lighting: CITY shall furnish electricity and lights according to the present openings in the premises covered by this agreement and no gasoline, oil, flashlights, or any other artificial lighting or light plants or electrical equipment shall be permitted, nor shall any other engines or machinery be brought on or operated on the premises without the prior express written approval of the MANAGER

3. Concessions: LESSEE agrees that CITY shall retain all and every right of concession for the sale of any merchandise whatsoever sold within the Civic Center and adjacent premises, and LESSEE further agrees that all profits occurring from such sales shall be retained by CITY. It is specifically agreed that LESSEE shall not offer for sale, or allow any other person to offer for sale any sheet music, phonograph records, souvenir booklets, programs, any type of printed publications or any other items, such as trinkets, novelties or any item of souvenir value without securing the prior express written permission of the MANAGER.

4. Removal of Equipment after Termination: CITY reserves the right after the termination of the period of this Agreement and the period allowed for removal from the leased premises any and all equipment or material remaining on the premises and to store the same in its own name or, at CITY's option, in LESSEE's name but at the cost and risk of LESSEE. CITY shall not be liable to LESSEE for any damage or loss in removing or storing said equipment or material. For any such additional time period during which equipment or material belonging to LESSEE actually remains on the premises. CITY shall be entitled to charge the sum per day indicated in the above rental schedule.

5. Responsibility for Premises: CITY or Civic Abilene, Inc. assume no responsibility whatsoever for any property placed in or on said premises, and CITY and Civic Abilene, Inc. are 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 occupancy of said premises under this Agreement; and all watchmen or other protective service desired by LESSEE must be arranged for by special agreement with the MANAGER.

6. Right of Entry: CITY, acting through the MANAGER or through representatives of the City Police or Fire Departments, shall have their right to enter any portion of the above-described premises for any purposes whatsoever and the entire building, including the premises expressly described in this Agreement, shall at all times be under the charge and control of the MANAGER. The keys to the premises shall remain in possession of the City of Abilene or the MANAGER, but during the period covered by the Agreement, the entrances and exits of the premises shall be locked or unlocked under the direction of LESSEE in accordance with the terms of this Agreement.

7. Handling of Funds: In the handling, control, custody and keeping of funds, whether the same are received through the box office or otherwise, the MANAGER is acting to accommodate LESSEE, and as to such funds, the MANAGER shall not be liable to LESSEE or to any other person for any loss, theft or defalcation thereof, whether such loss, theft or defalcation is caused or done by employees of Civic Abilene, Inc., the CITY or otherwise; nor shall any officer, agent or employee of Civic Abilene, Inc. or the CITY be liable for any loss, theft or defalcation of such funds unless he willfully caused or permitted the same or unless it was proximately caused by his/her own negligence.

IN WITNESS HEREOF, the parties hereto have executed this Agreement.

CITY

LESSOR

BY: _____

MOLLY MOSER

CIVIC CENTER MANAGER

LESSEE

BY: _____

(Printed Name)

(Printed Title)