

**TOWN OF LITTLE ELM, TEXAS**  
**MASTER AGREEMENT FOR PROFESSIONAL**  
**ENTERTAINMENT EVENT BOOKING SERVICES**

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Owner") and [Glenn Brooks Kendall dba Ken-Ran Productions](#), (hereinafter referred to as the "Consultant") for Professional Entertainment Event Booking Services to the Town of Little Elm for various projects located within Denton County, Texas in accordance with the provisions in this Master Agreement for Professional Services ("Agreement"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and in consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner and the Consultant hereby agree as follows:

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**ARTICLE I: CONTRACT & CONTRACT DOCUMENTS**

**1.1 THE CONTRACT**

1.1.1 The Contract between the Owner and the Consultant, of which this Agreement is a part, consists of the Contract Documents.

**1.2. THE CONTRACT DOCUMENTS**

1.2.1 The Contract Documents consist of this Agreement, the Request for Qualifications, Requirements and Instructions to Respondents, Specifications, Terms and Conditions, and each Entertainment Contract issued under this Agreement, including all documents pertaining to each Entertainment Contract.

**ARTICLE 2: TERM / TERMINATION**

**2.1 TERM**

2.1 The term of this Agreement shall be for twelve (12) months, with up to four (4), automatic, twelve (12) month renewals, a period of five years. This Agreement shall continue for the duration of the term, unless sooner terminated as provided herein.

**2.2 TERMINATION**

2.2.1 This Agreement may be suspended or terminated by either Party with or without cause at any time by giving a written 30 day notice to the other Party. In the event suspension or termination is without cause, payment to the Consultant, in accordance with the terms of this Agreement, will be made on the basis of services reasonably determined by Town to be satisfactorily performed to the date of suspension or termination. Such payment will be due upon delivery of all instruments of service to Town.

2.2.2 In the event that the Town requires a modification of this Agreement with Consultant, and in the event the Parties fail to agree upon a modification of this Agreement, the Parties shall have the option of terminating this Agreement. Payment to Consultant shall be made by the Town in accordance with the terms of this Agreement, for the services mutually agreed upon by the Parties to be properly performed by the Consultant prior to such termination date.

**ARTICLE 3. SCOPE OF SERVICES**

**3.1 ENTERTAINMENT CONTRACTS**

3.1 At Owner's request and in Owner's sole discretion, Owner may engage from time to time the Consultant to perform professional services in connection with a Project (as defined in Section 7-2, below). Consultant agrees to perform such services in accordance with the terms and

conditions of this Agreement and with any individual Entertainment Contract. Owner reserves the right, in its sole discretion, to hire other consultants for any reason and for any purpose. In performing its professional services hereunder and in connection with each Project and Entertainment Contract, Consultant shall follow the degree of professional standard of care and skill set forth in Section 6.3 of this Agreement.

### **3.2 SERVICES PROVIDED**

- 3.2.1 The Services to be provided by Consultant to Owner shall be as mutually agreed to in a separate written Entertainment Contract executed by Owner and Consultant. [A sample Entertainment Contract is attached hereto as Exhibit B.](#) Accordingly, whenever used in this Agreement, the term Professional Services shall mean those services specified in this Agreement and in an Entertainment Contract issued pursuant to this Agreement and all related work. Each Entertainment Contract shall include, directly or by reference, appropriate cost and pricing data and such other documentation as required by the Owner. Each Entertainment Contract shall be subject to and integrated into this Agreement, and the terms of this Agreement are incorporated into and made a part of each Entertainment Contract by reference to this Agreement. All Professional Services shall be performed by the employees of Consultant or Consultant's officers, employees, agents, representatives, sub-contractors, or sub-consultants unless otherwise provided in an Entertainment Contract. Consultant shall be wholly and solely responsible for any Professional Services or subcontracted Professional Services provided by any officer, employee, agent, representative, sub-contractors or sub-consultants of Consultant (collectively, Consultant's Personnel').

## **ARTICLE 4. COMPENSATION**

### **4.1 CONSULTANT FEES**

- 4.1.1 Compensation by the Owner to Consultant for Professional Services shall be on a fixed fee or a time and materials basis as specified in the applicable Entertainment Contract. All time shall be billed at Consultant's labor billing rates agreed upon by Owner. Said rates shall only be adjusted in writing as may be agreed to between the Parties. Owner may also reimburse Consultant for any Direct Expenses (as defined in Article 7) reasonably and necessarily incurred by Consultant in performing Professional Services under this Agreement. This Agreement contemplates that alternate compensation may be proposed by either Party on a case by case basis, including fixed price or time and materials tasks, or negotiated rates which, if applicable, shall be specified in the Entertainment Contract.

### **4.2 SUBCONTRACTED SERVICES**

- 4.2.1 When necessary, subcontracted services shall be procured by Consultant in connection with the Professional Services provided pursuant to this Agreement, subject to Owner's prior written consent. Consultant shall issue subcontracts for such subcontracted services in Consultant's own name. Consultant shall be compensated for subcontracted services for the actual amount invoiced by the subcontractor. Except as set forth in this Agreement, neither Consultant nor Owner may assign, sublet, transfer, or otherwise convey (together, an "Assignment"), and neither Consultant nor Owner has the power to enter into an Assignment of any or all of the rights, duties and obligations or interest in this Agreement without the prior written consent of the other party. Unless specifically stated to the contrary in any written consent to an Assignment, no Assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

## **ARTICLE 5. TERMS OF PAYMENT**

### **5.1 PAYMENT**

- 5.1.1 Consultant shall submit to Owner invoices for Professional Services and any compensation due under Section 2. Each invoice shall be accompanied by such documentation as Owner may reasonably require to verify the accuracy of the invoice, and the sum of all prior

payments made under this Agreement in connection with each Entertainment Contract. Payment to Consultant shall be made within thirty (30) days of receipt of such invoice and accompanying documentation, subject to Owner's right to withhold payment pursuant to Section 3-2 of this Agreement. Consultant shall not be entitled to any compensation for any services or work not actually performed or for any lost profits as a result of any abandonment or suspension of any work by the Owner.

- 5.1.2 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make payment to Consultant hereunder if:
  - 5.1.2.1 Consultant is in default of any of Consultant's obligations under this Agreement or any Entertainment Contract or any other documents in connection with a Project (and payment may be withheld to the extent of any such default);
  - 5.1.2.2 Any part of such payment is attributable to any services of Consultant which are not performed in accordance with this Agreement;
  - 5.1.2.3 Consultant has failed to make payment promptly to subcontractors or sub-consultants or other third parties used by Consultant in connection with Consultant's services hereunder for which the Owner has made payment to Consultant; or
  - 5.1.2.4 If Owner, in its good faith judgment and after consultation with Consultant, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Professional Services in connection with a Entertainment Contract, no additional payments will be due Consultant hereunder unless and until Consultant performs a sufficient portion of the Professional Services so that such portion of the compensation remaining unpaid is determined by Owner to be sufficient to complete the Professional Services.

## **5.2 DISPUTED BILLING**

- 5.2.1 In the event Owner disputes or contests any invoice submitted by Consultant under this Agreement, Owner shall nevertheless pay any undisputed amounts in accordance with Section 5.1. Any dispute shall be resolved by dispute resolution procedures set forth in Section 8-2.

## **5.3 BILLING ADDRESS**

- 5.3.1 Consultant shall submit monthly invoice and necessary and reasonable accompanying documentation to the following address.

**Physical Address:**

Town of Little Elm  
Accounts Payable  
100 West Eldorado Parkway  
Little Elm, Texas 75068

**Electronic Submittal:**

accounts.payable@littleelm.org

- 5.3.2 Invoices shall include the project name, purchase order number, Entertainment Contract number and be individually numbered.
- 5.3.3 Billing Period shall be for a calendar month and all work submitted shall be for the entire month ending on the 30<sup>th</sup> or 31<sup>st</sup> respectfully.

## **5.4 ACCOUNTING RECORDS**

- 5.4.1 Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; Consultant's accounting and control systems shall be reasonably satisfactory to Owner. Owner and Owner's accountants shall be afforded reasonable access to the Consultant's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, memoranda, and other data relating to this Agreement and any Entertainment Contract issued pursuant to this Agreement, during normal business hours at the location where such documents are stored by Consultant, including the ability of Owner to audit or inspect the same. Consultant shall preserve all such documentation related to this Agreement and

any Entertainment Contract issued pursuant to this Agreement for a period of five (5) years after final payment is made under each Entertainment Contract.

## **5.5 UNSATISFACTORY WORK**

- 5.5.1 Nothing contained in this Agreement shall require Owner to pay for any work that is unsatisfactory as determined by Owner or which is not submitted in compliance with the terms of this Agreement, nor shall such failure to withhold payment pursuant to the provisions of this Section constitute a waiver of any right, at law or in equity, which Owner may have if Consultant is in default, including the right to bring legal action for damages or for specific performance of this Agreement.

## **ARTICLE 6 OBLIGATIONS OF CONSULTANT**

### **6.1 GENERAL**

- 6.1.1 Consultant shall serve as Owner's professional consultant for all Professional Services or subcontracted services in connection with any Entertainment Contract between the Parties and shall provide professional consultation and advice and furnish customary services incidental thereto. Consultant shall perform all work hereunder in a manner satisfactory and acceptable to Owner in accordance with the terms and conditions of this Agreement, and in accordance with the professional standards applicable to Consultant applicable in the North Texas area. Consultant shall perform all Professional Services in a timely and professional manner, utilizing at all times an economical and expeditious manner for performing such Professional Services consistent with the standard of care defined in Section 4-3, below, and shall cause all subcontracted services to be similarly undertaken and performed. No less than monthly, Consultant shall keep Owner informed, in writing, as to the status and progress of all Professional Services and subcontracted services being provided under this Agreement and any Entertainment Contract issued pursuant to this Agreement. All oral information shall be subsequently confirmed in writing. Notwithstanding anything to the contrary in this Agreement, Consultant shall not be deemed to be an agent of Owner for any purpose but shall in all events be an independent contractor exercising control over its work and the manner in which it is performed. Except as specifically set forth in this Agreement or in a Entertainment Contract issued pursuant to this Agreement, (a) this Agreement shall not make Consultant a partner or agent of Owner for any purpose, and Owner shall not be deemed an agent for Consultant, and (b) neither Consultant nor Owner shall have the right or authority to assume, create, or enlarge any obligations or commitment on behalf of the other party and shall not represent itself as having the authority to bind the other party in any manner. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture or joint enterprise relationship, or to allow Owner to exercise discretion or control over the means or methods in which Consultant performs the Professional Services which are the subject of this Agreement or any Entertainment Contract issued pursuant to this Agreement; provided, however, that the Professional Services provided by Consultant pursuant to this Agreement and any Entertainment Contract issued pursuant to this Agreement shall be provided in a manner consistent with all applicable standards and regulations governing such Professional Services. The means and methods in which Consultant's Professional Services provided hereunder and under any Entertainment Contract issued pursuant to this Agreement shall be performed, shall be determined by the Consultant in its sole discretion. The employees, agents, and representatives of, and the methods, equipment and facilities used by, Consultant shall at all times be under Consultant's exclusive direction and control

### **6.2 AUTHORIZATION TO PROCEED**

- 6.2.1 Consultant shall not begin work on any Professional Services until the Owner directs Consultant in writing to proceed. Unless otherwise specified in a Entertainment Contract, each Entertainment Contract shall constitute notice and authorization to proceed in connection with the applicable Professional Services specified in such Entertainment Contract.

### **6.3 STANDARD OF CARE-REPRESENTATIONS**

- 6.3.1 The standard of care applicable to Consultant, including Consultant's Personnel, in providing Professional Services or subcontracted services under this Agreement or any Entertainment Contract issued pursuant to this Agreement, shall be the standard of professional ethics and the degree of skill, care and diligence normally employed by Consultant's profession performing the same or similar Professional Services or subcontracted services in the North Texas area. Consultant shall re-perform and otherwise remedy any Professional Services, including subcontracted services, not meeting the standard of care set forth herein, without additional compensation. Further, Consultant and all subcontractors shall perform all Professional Services in accordance with any applicable law, rule, regulation or order of any federal, state or local agency having jurisdiction over any matter related to this Agreement that is in effect or effective at the time such Professional Services or subcontracted services are performed.
- 6.3.2 Consultant represents that it is authorized to practice its profession in the State of Texas and that any necessary licenses, permits or other authorization to practice its profession and to provide the Professional Services set forth herein have been heretofore acquired as required by law, rule or regulation. Consultant agrees and acknowledges that Owner is entering into this Agreement in reliance on Consultant's professional abilities with respect to performing the Professional Services set forth herein or in any Entertainment Contract issued pursuant to this Agreement.

### **6.4 INSURANCE**

- 6.4.1 Consultant shall, at its own expense, procure, pay for and maintain during the term of this Agreement the insurance listed in the insurance requirements document, in Exhibit A.

### **6.5 FEDERAL, STATE, AND LOCAL REGULATIONS**

- 6.5.1 Consultant shall comply with all federal, state and local laws, standards, rules, and regulations applicable to this Agreement and to any Entertainment Contract issued pursuant to this Agreement.

### **6.6 CONFIDENTIALITY**

- 6.6.1 Consultant acknowledges that Owner is a municipality and must comply with all the rules and regulations of the Texas Public Information Act, as the same may be amended. Consultant is not an employee of, but a contractor for, the Owner, however, and as such Consultant hereby agrees that it shall not use the Owner's insignia, logo, service mark, or other intellectual property of Owner, but shall be allowed to use photographs of the Professional Services work, or any other publicity pertaining to the work, in any magazine, trade paper, newspaper, or other medium.

### **6.7 CONSULTANT'S PERSONNEL**

- 6.7.1 If at any time after entering into this Agreement, Owner has any objection to Consultant's representative or to any of Consultant's Personnel, or any objection to any personnel of sub-consultants retained by Consultant and assigned to the Project, Consultant shall promptly propose substitutes to whom Owner has no objection.

## **ARTICLE 7 OBLIGATIONS OF THE OWNER**

### **7.1 OWNER FURNISHED DATA AND ACCESS TO SITE**

- 7.1.1 The Owner shall provide to Consultant available (*i.e.*, in the Owner's custody and control) technical data that Owner determines to be needed to perform the Professional Services on the Project. Subject to the standard of care set forth in Section 4-3, above, Consultant may reasonably rely upon the accuracy, timeliness, and completeness of the information provided by the Owner. Consultant may be entitled to additional compensation and time to complete the Professional Services to the extent the cost or time to complete the Professional Services

are increased due to inaccurate technical data or inaccurate information provided by the Owner.

## **7.2 PROMPT NOTICE**

7.2.1 The Owner shall give prompt written notice to Consultant whenever Owner observes or becomes aware of any development that affects the scope or timing of Professional Services or any subcontracted services, or any defect in the Professional Services or subcontracted services of Consultant, including Consultant's Personnel; provided, however, that Owner's failure to comply with its obligations under this paragraph shall not be construed to adversely affect any liability, responsibility or obligation of Consultant to Owner under this Agreement. Consultant shall give prompt written notice to Owner whenever Consultant observes or becomes aware of any development or event that affects the scope or timing of Professional Services, or any defect in the Professional Services of Consultant, including Consultant's Personnel, provided under this Agreement or any Entertainment Contract issued pursuant to this Agreement.

## **7.3 CHANGES**

7.3.1 No changes in the general scope of Professional Services or subcontracted services under this Agreement, and no amendment may be made to any Entertainment Contract issued pursuant to this Agreement, unless such changes are first agreed to by Owner and Consultant in writing. Consultant's personnel shall not be permitted to be changed or substituted unless first authorized in writing by the Owner. If any approved changes affect Consultant's cost of or time required for performance of the Professional Services, an equitable adjustment may be made through a written amendment to this Agreement or Entertainment Contract issued pursuant to this Agreement.

# **ARTICLE 8 GENERAL LEGAL PROVISIONS**

## **8.1 FORCE MAJEURE**

8.1.1 Consultant is not responsible to Owner for any damages to Owner or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of Consultant and not avoidable by the diligence of Consultant; in such event, Consultant shall give Owner prompt notice of such event and the cause of delay and the performance of this Agreement shall be excused for the period of such delay caused by a force majeure event. If such force majeure event necessitates a change in the time required for performance of the Professional Services or subcontracted services, the Parties may make an equitable adjustment to the schedule and contract amount; provided, however, that Consultant shall continue to promptly perform all of its obligations under this Agreement, while the Parties are determining the nature and extent of any such adjustments. This Section shall not excuse Owner's obligation to make payment for Professional Services or subcontracted services in accordance with this Agreement; provided, however, that Owner's obligations under this Agreement, including Owner's obligation to pay Consultant, may be excused for such period of time as Owner is not able to perform as a result of acts of God, strikes, lockouts, accidents, or other events beyond the control of Owner and not avoidable by the diligence of Owner.

## **8.2 TERMINATION**

8.2.1 This Agreement or any Entertainment Contract issued pursuant to this Agreement may be terminated by either Party for convenience through written notice to the other Party to be effective thirty (30) calendar days after the other Party's receipt of such notice; provided, however, that Owner shall be responsible to pay Consultant for all authorized Professional Services and subcontracted services properly performed up to the termination date. Upon receipt of notice of termination for any reason, Consultant shall cause to be promptly delivered to Owner a copy of all confidential information and Work Product. In the event of a termination for convenience by either Party, Consultant shall have no recourse against Owner except as

stated in the preceding sentence; additionally, in the event of a termination for convenience by the City, Consultant may also be entitled to receive reimbursement from Owner of an amount equal to the sum of: (i) the reasonable out-of-pocket costs actually and necessarily incurred by Consultant in withdrawing its equipment and personnel from the Project and otherwise demobilizing; and (ii) the actual, reasonable and necessary costs incurred by Consultant in terminating those contracts, not assumed by Owner, for subcontractors services. Consultant shall document any cost claimed by it to Owner's reasonable satisfaction and shall supply Owner with copies of all invoices for subcontracted services covering the amounts claimed as costs for such purpose. Consultant shall submit an invoice to Owner for the amount of reimbursement claimed by Consultant with all supporting information and requisite documents. Payment by Owner of such invoice shall be based upon Owner's determination of the reasonableness of said costs.

8.2.2 Either Party may terminate this Agreement or any Entertainment Contract issued pursuant to this Agreement, because of default of the other Party, to be effective fifteen (15) days after receipt by the breaching Party of a written notice specifying such default, unless the breaching Party corrects such default or presents a mutually agreeable plan to cure such default within such time.

8.2.3 Notwithstanding any termination of this Agreement, unless otherwise agreed to by Owner, Consultant shall complete all Entertainment Contracts executed prior to the effective date of termination. Owner shall pay for such work in accordance with Article 3. Upon termination of this Agreement for any reason, if Owner has compensated Consultant for work not yet performed, Consultant shall promptly return such compensation to Owner.

### **8.3 SUSPENSION, DELAY, OR INTERRUPTION OF WORK**

8.3.1 Upon five (5) days prior written notice, the Owner may suspend, delay, or interrupt for up to six (6) months the services of Consultant for the convenience of the Owner. Nothing in this Section shall be construed to apply to any such suspension, delay or interruption caused by an event identified in Section 6-1. A suspension may be withdrawn by Owner upon five (5) days written notice to Consultant. Any suspension, delay or interruption that exceeds six (6) months shall be deemed to be a termination by Owner for convenience, and Consultant may be compensated by Owner as if this Agreement were a termination for convenience.

### **8.4 INDEMNIFICATION**

8.4.1 Notwithstanding any other provision in the Contract Documents to the contrary:

8.4.1.1 **CONSULTANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER, ITS TOWN COUNCIL, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF PROFESSIONAL SERVICES OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONSULTANT IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS"). BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY. INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEY'S FEES AND COSTS OF COURT, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEY'S FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

8.4.1.2 **THE OBLIGATIONS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

8.4.1.3 **CONSULTANT SHALL CAUSE ALL CONTRACTS FOR SUBCONTRACTED SERVICES TO INCLUDE A LIKE INDEMNITY THAT SHALL COVER BOTH THE OWNER AND CONSULTANT. NOTHING HEREIN SHALL LIMIT THE INSURANCE REQUIREMENTS OR APPLICABILITY OF SAME SET FORTH IN THIS AGREEMENT AND THE CONTRACT DOCUMENTS.**

8.4.2 The above indemnity is a business understanding between the Parties and applies to all different theories of recovery, including breach of contract or warranty, tort including negligence, statutory liability or any other cause of action.

## **8.5 JURISDICTION**

8.5.1 The law of the State of Texas shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement. In the event of any legal action under this Agreement, venue for all causes of action shall be instituted and maintained in courts of competent jurisdiction located in Denton County, Texas.

## **8.6 SEVERABILITY**

8.6.1 If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceable provisions shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## **8.7 ASSIGNMENT**

8.7.1 Neither Party may sell, transfer or assign any or all of its respective rights nor obligations under this Agreement to a third party without the prior written consent of the other Party.

## **8.8 SURVIVAL**

8.8.1 Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. Without limiting the foregoing, Articles 6 and 8 shall survive termination of this Agreement.

## **8.9 NO THIRD PARTY RIGHTS**

8.9.1 Except as provided in Sections 6-4 and 8-4, this Agreement shall not create any rights or benefits to parties other than Consultant, Owner, and any Owner-affiliated entity including, but not limited to, an entity formed for purposes of developing and/or owning the Project.

## **8.10 NOTICE**

8.10.1 Except as otherwise provided herein, all notices and other communications required or permitted to be given under this Agreement, including Exhibits and Entertainment Contracts, shall be in writing, addressed to the Parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by certified mail, postage prepaid, return receipt requested. The address of each Party is as follows:

IF TO OWNER: Town of Little Elm Town Manager  
100 West Eldorado Parkway, Little Elm, Texas 75068  
Contracts@littleelm.org

IF TO CONSULTANT:

8.10.2 Each Party may from time to time change its address for receipt of notices by sending notice thereof in the manner provided herein to the other Party. Each notice given by certified mail shall be deemed delivered on the date of delivery as shown on the return receipt, or if delivery is attempted, at the last address specified and the notice is returned, notice shall be deemed delivered on the date the notice was originally sent. Each notice delivered in any other manner shall be deemed delivered as of the time of actual receipt thereof. The Parties



acknowledge and agree to provide to the other Party within seventy-two (72) hours of transmission such documents bearing the original signatures.

#### **8.11 RIGHT OF ENTRY**

8.11.1 Owner shall permit Consultant reasonable access to a Project as may be required to permit Consultant to perform the Professional Services under this Agreement; provided, however, Consultant shall coordinate all Professional Services so as not to interfere with any of Owner's operations at a Project site.

#### **8.12 INTERPRETATION AND FAIR CONSTRUCTION OF AGREEMENT**

8.12.1 This Agreement has been reviewed and approved by each of the Parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to the fair meaning of the provision.

#### **8.13 NON-WAIVER**

8.13.1 The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same rights shall be and remain in full force and effect.

#### **8.14 DISPUTE RESOLUTION**

8.14.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to any legal action. The Owner and Consultant shall endeavor to resolve claims, disputes and other matters in question between them first, informally and, second, by mediation. A request for mediation shall be made in writing and delivered to the other Party to this Agreement. The Parties shall have fifteen (15) days after receipt of a request for mediation to agree on a mediator. If the Parties are unable to agree on a mediator within fifteen (15) days, each Party shall have an additional five (5) days to designate a mediator. The two mediators so designated shall then designate a third unbiased mediator who shall be the mediator to conduct the mediation. The decision of the mediator shall be non-binding. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. If the Parties do not resolve a dispute through mediation pursuant to this section, then the Parties may pursue litigation in a court of competent jurisdiction as the agreed upon method of binding dispute resolution.

### **ARTICLE 9. DEFINITIONS; MISCELLANEOUS**

#### **9.1 DIRECT EXPENSES**

9.1.1 Direct Expenses shall mean those out-of-pocket reasonable costs or expenses directly and necessarily incurred by Consultant, including its employees, for Professional Services including, but not limited to, transportation costs, including current rates for Consultant's vehicles; meals and lodging (however, in order to be reimbursed, any costs associated with out-of-town travel shall receive the prior approval of Owner), laboratory tests and analysis; and special Owner-requested and Project-related insurance, not including the insurance described in Section 4-4. Direct Expenses shall not include payroll costs and compensation, capital expenses, overhead, or costs incurred as a result of the application of Section 4-3 or Section 6 of this Agreement or otherwise as a result of the negligent act, error or omission or willful misconduct of Consultant or Consultant's Personnel. Reimbursement for Direct Expenses shall be on the basis of actual charges when furnished by commercial sources

and, when furnished by Consultant, on the basis of current rates specified in the applicable Entertainment Contract, and all reimbursement for Direct Expenses shall be subject to Owner's approval and determination of reasonableness.

## **9.2 OTHER DEFINITIONS**

9.2.1 Whenever used in this Agreement, the terms: (a) "including" shall mean "including without limitation," (b) "Party" shall mean Owner or Consultant, (c) "Parties" shall mean Owner and Consultant, collectively, (d) "Project" shall mean the project for which a Entertainment Contract has been issued in accordance with Article 1, and (e) "Work Product" shall mean the Consultant's instruments of professional services.

## **9.3 MISCELLANEOUS**

9.3.1 All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination or expiration of this Agreement shall survive termination or expiration. This Agreement and the Entertainment Contracts issued pursuant to this Agreement, and any Exhibits attached to this Agreement, constitute the entire Agreement, supersede all prior written or oral understandings, and may only be changed, amended or altered by a written amendment to this Agreement executed by both Parties.

## **ARTICLE 10 SIGNATURES**

10.1 The undersigned officers and/or agents of the Parties hereto are the properly authorized persons, and have the necessary authority, to execute this Agreement on behalf of the Parties hereto, and each Party hereby certifies to the other that any necessary motions, resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the Parties execute below:

**TOWN OF LITTLE ELM**

**CONSULTANT**

\_\_\_\_\_  
Matt Mueller, Town Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Town Contact**

**Consultant Contact**

**Exhibit A: Insurance Requirements**

**Exhibit B: Sample Entertainment Contract**

## EXHIBIT A

### SPECIFIC INSURANCE REQUIREMENTS

***All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:***

**[X] A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than \$1,000,000.00 shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form, (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury (\$500,000) and Property Damage Liability (\$500,000) for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse, or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this Contract, personal injury liability and broad form property damage liability.

**[X] Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$1,000,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury (\$500,000) and property damage liability (\$500,000) arising out of the operation, maintenance, and use of all automobiles and mobile equipment used in conjunction with this contract. Coverage shall include all owned/leased vehicles, non-owned vehicles, and hired vehicles.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- Code 1 - any auto, or
- All owned hired and non-owned autos.

**[X] Workers' Compensation Insurance**

Contractor shall purchase and maintain Workers' Compensation insurance, which in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$500,000 for each accident, \$500,000 per each employee, and a \$500,000 policy limit for occupational disease. The Town need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the Town, its officials, agents, employees, and volunteers for any work performed for the Town by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).



### ENTERTAINMENT CONTRACT # \_\_\_\_\_

This CONTRACT dated \_\_\_\_\_ for the services on the engagement described below is made between The Town of Little Elm (herein called PURCHASER) and Ken-Ran Productions (herein called PRODUCER).  
**(ANY AND ALL RIDERS ATTACHED ARE MADE A PART HEREOF)**

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ARTIST: \_\_\_\_\_ EVENT: \_\_\_\_\_

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VENUE: \_\_\_\_\_ o Audience Size: 3  
o Physical Address: \_\_\_\_\_ o Website: \_\_\_\_\_

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DATE: \_\_\_\_\_  
**(Schedules are Approximate and Subject to Change upon agreement between Artists & Purchaser)**  
o Artist Billing:  
o Production Load In Time:  
o Artist Load-In/Sound Check Time:  
o Set Time/Length:  
o Fireworks/Drone Show:  
Band Plays Purchaser Playlist Through Sound System

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PURCHASER-PROMOTER: Town of Little Elm  
o Address: 100 W. Eldorado Parkway, Little Elm, TX 75068  
o Contact: Drew Bailey o Phone: 214-618-2914 o Cell: 517-902-6053 o Email: [DBailey@littleelm.org](mailto:DBailey@littleelm.org)  
o Contact: Cara Blackmon o Phone: 214-618-1401 o Cell: 214-536-7094 o Email: [CBlackmon@littleelm.org](mailto:CBlackmon@littleelm.org)  
o Contact: Delaney Williams o Phone: 281-686-4345 o Cell: 972-731-1468 o Email: [Del.Williams@littleelm.org](mailto:Del.Williams@littleelm.org)

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TOTAL PURCHASE PRICE:  
o Includes ARTIST performances and listed services

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DEPOSIT: \$ \_\_\_\_\_ Made payable to Ken-Ran Productions due with signed contract by \_\_\_\_\_.  
BALANCE: \$ \_\_\_\_\_ Made payable to Ken-Ran Productions due \_\_\_\_\_.

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*Checks should be made payable to Ken-Ran Productions. Contract price reflects a 5% cash discount for payment made by preferred methods of payment – cash, check or ACH. If payment is not made by cash, check or ACH, the discount will be rescinded.*

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TICKET PRICES/LEVELS: \_\_\_\_\_

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PROMOTIONS / SPONSORSHIP: Purchaser pays for adequate promotion of event

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MERCHANDISE: 100% to Artists – Artists Sell  
o Purchaser to Provide Three (3) Tents, Power, (3) Eight Foot Tables and (6) Folding Chairs – This Includes Headliner and Support

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PRODUCTION COMPANY: Ken-Ran Productions  
o Contact: Brooks Kendall o Office: 817-573-6100 o Cell: 817-919-8927 o E-Mail: [brooks@kenran.com](mailto:brooks@kenran.com)  
o On-Site Contact: TBD o Cell: TBD  
o Ken-Ran Productions or Band will Provide Sound Equipment Adequate for Audience Size and Additional Stage Lighting  
o Ken-Ran Productions or Band will Provide Use of Sound System for Fireworks After the Concert – Purchaser MUST Provide Playlist Prior to Event  
o Purchaser will Provide the Following:  
Stage – Covered Amphitheater  
Power for Production Equipment – 200Amp needed for Sound  
One (1) Tent (Minimum 10' x 10') for FOH Production Equipment  
One (1) 6' or 8' Table and Two (2) Chairs at FOH Position  
If Needed, Purchaser Provides Four (4) Loaders & Two (2) Utility Carts (or flat bed trailer/truck) for All Band Load-ins and Load-outs

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ACCOMMODATIONS: N/A – Artist's Responsibility

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## EXHIBIT B

HOSPITALITY: Purchaser Provides the Following per Artist Rider:

- o Meals:
- o Dressing Room Hospitality:
- o Other:

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OTHER PROVISIONS:

- o Stage:
- o Age Group:
- o Green Room:
- o Meet & Greet:
- o Parking & Unloading:

Parking Spots Blocked off with Barricades or Cones Provided by Purchaser for Artist & Production Vehicles

- o Inclement Weather: In the case of inclement weather, Artist shall be paid in full. Purchaser represents and warrants it has sufficient insurance or funds to cover any such cancellation.

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THE ADDITIONAL PROVISIONS AND ANY RIDERS ATTACHED HERETO ARE PART OF THIS CONTRACT AND ARE DEEMED INCORPORATED HEREIN.

THIS CONTRACT MAY BECOME VOID IF PURCHASER FAILS TO SIGN AND RETURN SAME WITHIN 10 DAYS OF DATE ISSUED.

PURCHASER: Town of Little Elm

PRODUCER: Ken-Ran Productions  
EIN 88-2249209

Signature X \_\_\_\_\_  
Address: 100 W. Eldorado Parkway  
Little Elm, TX 75068

X \_\_\_\_\_  
Address: 2505 Scenic View Ct.  
Granbury, TX 76048  
817-573-6100 (PH) 817-977-6307 (FAX)

## DEPOSIT

Failure to return contract with deposit by date specified will result in cancellation of engagement and termination of offer. When balance is due prior to engagement, failure to pay full amount at the designated date will result in cancellation of engagement by Producer with total contract price still being owed to Producer from Purchaser.

## FINAL PAYMENT

All payments must be made in cash or by cashier's check payable to Producer. If payment is late, Purchaser will be assessed a late fee of \$50 per day. If payment is made by check and the check bounces, Purchaser will be assessed a \$100 bounced check fee plus any expenses and fees charged to Producer in connection with the bounced check, in addition to the late fee.

## TERMINATION / CANCELLATION

If contracts are not signed and returned within 10 days of issue date, PRODUCER has the right to consider them void.

Retainers are nonrefundable and this contract is non-cancelable by either party except as follows:

If PURCHASER wishes to cancel, written notice shall be given to PRODUCER of such intent. PRODUCER will attempt to locate a replacement booking for the ARTIST of equal value acceptable to the ARTIST(s) contracted herein. If such a replacement booking is completed, this contract will then be canceled and PURCHASER shall have no further liability except that any retainer paid on this contract is not refundable. If no suitable replacement booking can be made, or if notice of cancellation is received less than 60 days from the date of engagement, PURCHASER shall be liable for full balance of contracted compensation as liquidated damages.

## FORCE MAJEURE

In the event the performance is prevented, rendered impossible or infeasible by an Act of God, any act or regulation of any public authority or bureau, civil tumult, strike, epidemic, interruption or delay of transportation services, war conditions, emergencies, or any other similar or dissimilar cause beyond the control of either Artist or Purchaser (each a "Force Majeure Occurrence"), it is understood and agreed by the parties that there shall be no claim for damages by either party against the other and each party's obligations hereunder shall be deemed waived.

Notwithstanding the foregoing, if Artist's performance is prevented by a Force Majeure Occurrence, but Artist is ready, willing and able to render its services in accordance with the terms hereof, then Purchaser shall pay Artist the full amount of the Artist Guarantee. The parties acknowledge and agree that the occurrence of the Corona Virus, COVID19, H1N1 virus (i.e., swine flu) in an area in close proximity to the performance venue shall not in and of itself be deemed a Force Majeure Occurrence, unless the US Department of Health and Human Services officially declares the virus to be an epidemic affecting the particular city or county in which the performance is scheduled to take place. (We strongly recommend PURCHASER acquire event insurance to cover losses due to force majeure cancellation of the engagement or of the event itself under the aforementioned conditions- such insurance is readily available through a number of sources we recommend <https://www.cossioinsurance.com>)

## LAW FORUM

If any legal proceedings are necessary to enforce or interpret the terms of this agreement, the prevailing party shall be entitled to reasonable attorney's fees and Court costs in addition to any other relief provided by law. This contract shall be deemed made and entered into the State of Texas and shall be governed by the laws of the State of Texas applicable to contracts entered into and wholly performed therein. The State and Federal Courts located in Hood County, Texas shall have exclusive jurisdiction over any disputes arising hereunder and the parties hereto agree to submit to the jurisdiction of these courts. Client agrees that the maximum extent of consultant's liability to client for any tort or contract claim shall be no greater than the fee paid by client under this agreement. The parties further agree to and do hereby waive formal service of process in regard to actions brought relating to this Agreement and agree to accept service of process via certified mail, return receipt requested.

## AGREEMENT ACKNOWLEDGEMENT

The representative(s) or agent(s) of Purchaser in signing this agreement acknowledges his/her (or their) authority to do so and to bind Purchaser to the terms and conditions contained herein. This contract sets forth the entire agreement between the parties hereto and merges all prior discussion and agreements between them. This contract may not be amended except by instrument in writing signed by the parties hereto. If any of the provisions of the agreement are determined to be void or unenforceable, the remaining provisions hereof shall remain in full force.

## CONTROL OF PRODUCTION

Producer and Artist shall at all times exercise complete supervision, direction, and control over the services of all personnel on this engagement and expressly reserves the right to control the manner, means and details of the performance of services to fulfill the entertainment requirement. ARTIST shall use all efforts to conform to rules and policies of this establishment, and may be liable for penalties from above wages for flagrant abuse of said rules.

## ATTACHMENTS

Any Rider attached to this Engagement Contract, if any, is a part of this agreement as if set out herein, and is incorporate herein for all purposes. The parties also expressly agree to be bound by all terms and conditions contained in any such Rider.

## UNION PROVISIONS

This contract, and the terms and conditions contained herein, may be enforced by the Purchaser, and its agents, and by each musician who is a party to this contract or whose name appears on the contract or who has, in fact, performed the engagement contracted for, and by the agent or agent(s) of each participating musician, including the Local Union. It is expressly understood by the Purchaser and the entertainers who are parties to this contract that neither the Federation nor the Local Union are parties to this contract in any capacity, that neither the Federation nor the Local Union shall be liable for the performance or breach of any provision hereof.

Initials\_\_\_\_\_

## INSURANCE

PURCHASER & PRODUCER shall provide, at its sole cost, Commercial General Liability insurance in the amount of One Million U.S. Dollars (1,000,000) per occurrence, covering any and all liabilities, claims, or losses resulting from injuries to any person and from any property damage and/or losses in connection with the engagement.

## TAXES

If there is any assessment of tax by any taxing authority for monies earned during the performance(s), said taxes shall be paid by the PURCHASER and it is fully understood and agreed that no deductions whatsoever in respect of such taxes shall be taken from the price contained herein or in any percentage earned hereunder. This is an independent contractor Contract. No Federal, State or Local taxes shall be deducted from the guarantee.

## ADVERTISING

This engagement is not to be advertised or publicized in any manner or form until this contract is fully processed and signed by both parties. Correct billing of the Artist is shown on page 1 of this contract. Artist's name must appear at the venue, on marquee, & advertisements correctly. Artist's name must appear as special guest when opening.

This contract covers the personal appearances of Artists and Leader only for the above described engagement. Any appearance for any reason whatsoever other than the herein provided must be approved in writing and signed by AGENT representative and Buyer.

## REPRODUCTION

Absolutely no portion of the ARTIST'S performance rendered hereunder may be broadcast, taped, filmed, recorded, or embodied in any form for any purpose or reproduction without the prior written approval of PRODUCER. PURCHASER agrees to deny admittance to any person carrying audio or video recording equipment. This shall include members of the audience, media, venue, and PURCHASER'S staff.

## OUTDOOR PERFORMANCE

For outdoor events, Client will provide alternate indoor performance location in case of rain, excessive heat or other inclement weather. Provided ARTIST is present, ready, willing and able to perform, ARTIST will be paid in full. Artist shall have full authority to judge weather conditions and will notify Purchaser at such time that they must choose to move the performance indoors or cancel or reschedule the performance. Rescheduling of a performance canceled due to inclement weather may only occur prior to the Artist's load in of equipment and shall be subject to Artist's discretion and approval in writing.

## AGENT/ARTIST PROVISIONS:

The engagement price includes agent's commission, consultation services, and/or contract fees as specified herein and unless otherwise stipulated will be held in fiduciary by leader for delivery to agent. Leader agrees commissions are due and owing at the conclusion of the engagement or at the end of the week, and if not paid to Agency within 10 days of date due, they shall be considered delinquent and shall bear an interest rate directly purported to the current (contract signing date) national prime interest rate. If litigation is necessary for collection, attorney's fees and court costs shall be payable by debtor.

The undersigned agent is acknowledged to have fully performed upon the commencement of this engagement; he shall not be liable for the default of a Purchaser or the non-performance of the group. No changes in the affecting commission shall be made without the written approval of agent.

If leader or key personnel of this musical or other entertainment group, is re-booked into this or any establishment represented by the purchaser (including chain buyers of music) within 2 years from the termination of this agreement, the re-booking will be deemed to have resulted from the efforts of Ken-Ran Productions, and the Purchaser and Leader of the subsequent re-booking shall be jointly and severally liable for payment to Ken-Ran Productions for a commission in the rate set forth herein to this engagement.

Producer executes this agreement as an independent contractor. The Artist agrees to assume responsibility for all taxes, insurance and related benefit, including but not limited to worker's compensation, general liability, medical and life insurance.

Should the engagement extend beyond the agreed end time, and Purchaser requests that Artist continue the Performance, Purchaser agrees to pay the stated Overtime Fee promptly upon the conclusion of the Performance. The Overtime Fee stated herein is an hourly rate or will be prorated as such and shall be billed in minimum 30 minutes period increments. Artist is responsible for additional commissions due Ken-Ran Productions.

## ACCESS

Representatives of Ken-Ran Productions shall have access to place of performance and with notice to the Purchaser may have potential clients briefly view the event.

We acknowledge and confirm that we have read and approve the terms and conditions set forth in this contract

Initials\_\_\_\_\_