

**FACILITY USE AGREEMENT
TOWN OF LITTLE ELM – COMMUNITY SERVICES DEPARTMENT
LITTLE ELM ANGELS FOUNDATION CONCESSION
AT LITTLE ELM PARK**

This Agreement is made by and between Little Elm Angels Foundation (hereinafter referred to as the “Concessionaire”), and the Town of Little Elm, Texas (hereinafter referred to as the “Town”). Wherever in this Agreement the term “Concessionaire” is used, it shall include Concessionaire and any of its employees, servants, agents, or representatives.

1. Purpose. The Concessionaire is to provide Diwali Festival at Little Elm Park to celebrate a cultural celebration for the community.

2. Use of Park. The Town hereby agrees to assign the concession at Little Elm Park on a non-exclusive basis and for the purpose herein expressed to the Concessionaire for the period September 28, 2024 (set up) through September 29, 2024 (event date). During such period, the Concessionaire shall have the right to use the park and lake upon such hours as may be set by the Town from time to time after presentation and approval of a proposed schedule by the Concessionaire. The Concessionaire agrees to allow the Town 100% of the revenue associated with parking to cover hard cost of police, fire, medics, professional parking lot sweep, porters, parks facility team, and beach ambassadors expenses. Upon the Town accumulating \$18,000 in parking revenue, designated for offsetting the event's hard costs, the Town will then equitably share its 60% parking revenue share, splitting it equally (50/50) with the Concessionaire. The 50/50 split will begin at \$18,001 of the Town's collected revenue. The facility use agreement may be extended in one-year (1) increments twice with the mutual consent of both parties. The total length of this agreement will not exceed three (3) years. The Town and the Concessionaire expressly understand and agree that this agreement is subject to all the terms, conditions, privileges and obligations incorporated in the lease granted to the Town of Little Elm by the Secretary of the Army under Lease No. DACW 63-1-97-0617 and such terms are binding on the Concessionaire as if they were set forth herein.

3. Termination. The Concessionaire may terminate this Agreement upon submission of a 30-day written notice to the Town. The Town may terminate this Agreement: A) Upon submission of 30-day written notice “without cause”; or B) Immediately upon submission of written notice “for cause”. All notices must be written and transmitted by certified mail.

4. Independent Contractor. The Concessionaire hereby agrees and acknowledges that it is an independent contractor and that its programs offered and services performed shall be and are independent of the Town’s supervision, oversight, direction, or control.

5. Concessionaire Obligations.

- A. Provide all equipment, materials, labor, tools, and personnel necessary for proper operation and execution of event.

1. Concessionaire shall permit no glass containers on park property and must enforce said rule with customers.
 2. All material and services provided by the Concessionaire shall comply with all current Federal, State and Local boating laws and regulations, as well as Town of Little Elm ordinances, rules and regulations.
- B. The Concessionaire shall schedule a number of people sufficient to meet the demands of the public at the contract premises. The staff shall be uniformed in a manner consistent with a quality operation acceptable to the Town.
- C. The Concessionaire will send each vendor the town's vendor link to complete and each vendor is to complete the link 30 days prior to event date. If a vendor has neglected to complete the vendor link by September 16, 2024, it is up to the discretion of The Town, if they are allowed to vendor during the September 29, 2024 event. The Concessionaire will provide a final list of all vendors and emails to the Managing Director of Tourism and Business Development at minimum of 30 days prior to event day. If the Concessionaire would like to complete or have input in the vendor site map, it must be completed and submitted to the Managing Director of Tourism and Business Development by September 16, 2024. If the Concessionaire doesn't complete the site map, the Town will complete it without input from the concessionaire.
- D. The Concessionaire will send the Managing Director of Tourism and Business Development a list of attendees and vendors who get one complimentary parking pass, by September 23, 2024. Any vendor not on the list, will be subject to parking fee. The Concessionaire cannot exceed 109 complimentary parking passes.
- E. Provide a staff member dedicated to communicating with all vendors associated with the event. This staffer must be present during vendor load in and vendor load out.
- F. Remove trash generated by the program from the park, lake and adjacent areas at the conclusion of set up and event date. The Concessionaire will staff the appropriate amount of people for clean up during the event and at the conclusion.
- G. Timely investigate and promptly report to the Community Services Director or Managing Director of Tourism and Business Development any and all injuries or damages to persons or property at the park and lake during the hours of the Concessionaire's use.
- H. Do not sublet the use of the park or lake to any person or group of persons, unless approved in advance and in writing by the Town.
- I. Do not deny the general public access to the park or lake.

- J. Designate and identify a contact person who will represent the Concessionaire before the Town's Community Service Department regarding this Agreement.
- K. Concessionaire must submit to a criminal background check prior to any agreement.
- L. The Concessionaire shall not make any structural alterations, repairs, or improvements of the premises, without the written permission from the Director Community Services.
- M. Provide additional trash receptacles.
- N. Provide portable restrooms to match the quantity of guests attending the event.

6. Town Obligations.

- A. Secure event space during rental time frame; amplettheatre, pavilion, playground pavilion parking lot, and circle drive.
- B. Designate and identify a contact person who will represent the Town regarding this Agreement.
- C. Assign parking fees to Little Elm Park, Lobo Stadium, Town Hall and any other parking lot that may be associated with the event. The Town will coordinate the execution of parking with the hired parking company.
- D. Create a vendor link and send to The Concessionaire by July 1, 2024.
- E. Create a site map, if one is not submitted by September 16, 2024.
- F. Manage on site vendor load in and on site vendor load out.
- G. Hold all vendors accountable to the same standard Little Elm event vendors are held too.
- H. Send vendors site map and load in time by September 26, 2024.
- I. Provide staff from Public Safety Department, Parks Department, Tourism Department, and Public Works Departments, in exchange for 100% of parking fee revenue.
- J. In case of park closure, the Town will make every effort to notify the Concessionaire.

7. Pricing Requirements. Parking prices and locations are up to the discretion of The Town. The Town is proposing \$25 parking inside Little Elm Park, \$20 for Town Hall parking lot, \$20 for Lakeside Sports

Complex, and \$20 The Rec/Cove parking lot. The Concessionaire will sponsor the Lobo Stadium Lot at \$2,000 to The Town of Little Elm, allowing parking at LOBO stadium to be complimentary for attendees. If the concessionaire decides to purchase the softball parking lot for sponsors/VIPs, the Town agrees to sell it the concessionaire for \$5,500. The \$2,000 and \$5,500 payments are due to The Town of Little Elm by November 20, 2024.

8. Complaints. The Concessionaire shall assume full and complete responsibility for handling and resolving any and all complaints concerning the Concessionaire's operations, sales or service provided.

9. INDEMNITY. THE CONCESSIONAIRE AGREES TO INDEMNIFY AND HOLD HARMLESS THE TOWN OF LITTLE ELM, ITS MAYOR, TOWN COUNCIL, EMPLOYEES, AGENTS, SERVANTS, AND REPRESENTATIVES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS AND LIABILITY OF EVERY KIND OR CHARACTER, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY TO OR DEATH OF ANY PERSON OR FOR DAMAGE TO ANY PROPERTY ARISING IN TORT, OUT OF OR IN CONNECTION WITH THE CONCESSIONAIRE'S USE OF THE PARK OR LAKE PURSUANT TO THIS AGREEMENT, WHERE SUCH CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, OR LIABILITY OF ANY KIND OR CHARACTER ARISE, IN WHOLE OR IN PART, FROM THE ACTS, CONDUCT, OR OMISSIONS OF THE CONCESSIONAIRE AND/OR ITS EMPLOYEES, SERVANTS, AGENTS OR REPRESENTATIVES.

10. Insurance. The Concessionaire shall procure and maintain in force for the duration of this contract liability insurance against any claim for injury to a person or damage to property which may arise from, or in connection with, the use of the park or lake by the Concessionaire and its agents, representatives, volunteers, employees, subcontractors, invitees, and all enrollees in the Concessionaire's program. Such liability insurance shall be in an amount not less than \$300,000 per person and \$1,000,000 per occurrence. The Concessionaire shall procure and maintain such insurance coverage at its own expense. The Concessionaire shall provide proof of insurance prior to the execution of this Agreement and at such other times as demanded by the Town. The Concessionaire shall ensure that the Town is named as an additional insured on such policy. The Concessionaire shall provide a Certificate of Insurance with the types and amounts of coverage within 14 calendar days of notification of award.

11. Notice. Notices required by this Agreement shall be submitted to the persons and/or organizations, as follows:

A. Notices to the Town shall be directed to:

Town of Little Elm
Director of Community Services
100 W. Eldorado Parkway
Little Elm, TX 75068

B. Notices to the Concessionaire shall be directed to:

The Parties may later designate in writing any other individual or entity to whom notices or referrals shall be submitted.

12. Closure of Park and Lake. The Town reserves the right to close the Park at any time and under any conditions deemed necessary for public safety. The Concessionaire hereby waives, releases, discharges and disclaims any and all claims, causes of action, losses, liability, damages or injuries relating to any closure of the park by the Town and further agrees to indemnify and hold harmless the Town, its Mayor, Town Council, employees, agents, servants, and representatives from any and all claims, losses, damages, causes of action, suits, and liability of any kind or character, including all expenses of litigation, court costs and attorney's fees, resulting from any closure of the park by the Town. Every effort will be used to notify the Concessionaire when a closure occurs.

13. Retention of Improvements. Should the Town terminate this Agreement resulting from the Concessionaire's breach, the Town shall be entitled to keep any improvements made by the Concessionaire. Concessionaire shall be given credit against the minimum amount that would have been due to the Town for the balance of the term of the Agreement.

14. Governing Law & Venue. This Agreement shall be governed by and is to be construed, interpreted and enforced in accordance with the laws of the State of Texas and of the United States of America. The Concessionaire and the Town agree and consent to the exclusive jurisdiction of the District Courts and County Courts at Law of Denton County, Texas, and of the United States District Court for the Northern District of Texas (Dallas Division) and acknowledge that such courts shall constitute proper and convenient forums for the resolution of any actions between the Concessionaire and the Town and agree that such courts shall be the exclusive forums for the resolution of any actions between the Concessionaire and the Town.

15. Severability. If any provision of this Agreement is found to be invalid, illegal, or unenforceable for any reason, the Concessionaire and the Town intend and agree that such provision is fully severable and that the remaining parts of the Agreement shall be effective and fully operative.

16. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the parties. All other oral agreements by the parties hereto are hereby merged into this Agreement, which shall not be amended or altered except by a written document signed by the parties hereto.

17. Representations and Warranties by Concessionaire. If Concessionaire is a corporation, partnership or a limited liability company, Concessionaire warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement,

and the individual executing the Agreement on behalf of Concessionaire has been duly authorized to act for and bind Concessionaire.

18. Franchise Tax Certification. A corporate or limited liability company Concessionaire certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that the corporation or limited liability company is exempt from the payment of such taxes, or that the corporation or limited liability company is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

19. Eligibility Certification. Concessionaire certifies that the individual or business entity named in the Agreement is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

20. Payment of Debt or Delinquency to the State or Political Subdivision of the State. Concessionaire agrees that any payments owed to Concessionaire under the Agreement may be applied directly toward any debt or delinquency that Concessionaire owes the Town of Little Elm, State of Texas or any political subdivision of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.

21. Texas Family Code Child Support Certification. Concessionaire certifies that no owner, partner or officer of the company is delinquent in child support obligations and therefore is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

TOWN OF LITTLE ELM

By: _____
Matt Mueller, Town Manager
100 W. Eldorado Parkway
Little Elm, TX 75068
214-975-0405

Date: _____

CONCESSIONAIRE

By: _____

Date: _____