

THE STATE OF TEXAS)
)
COUNTY OF DENTON)

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made by and between **City of Lewisville**, a Texas municipal corporation whose address is PO Box 299002, Lewisville, TX 75029 (the "City"), and **SEMA Construction, Inc.**, a Colorado corporation whose address is 7353 South Eagle Street, Centennial, CO 80112 (hereinafter referred to as "SEMA") (collectively, the "Parties").

Recitals

WHEREAS, SEMA has requested temporary access and use of the surface of certain property owned or operated by the City in Denton County, Texas, (the "Property"), for the purposes of parking of vehicles and equipment and material storage associated with the TXDOT IH35E/FM1171 Reconstruction Project ("Project"); and

WHEREAS, the Property is described as approximately a 4.6825 acre tract of land out of Tract 5, Abstract 0255A, R. Craft Survey, Denton County, Texas, as more specifically described in Exhibit A, attached hereto; and

WHEREAS, the Project is part of a statewide strategic plan as an area in need of updates in order to relieve traffic congestion and increase economic development; and

WHEREAS, the City has determined that leasing the Property to SEMA, including its employees, agents, contractors, successors and assigns, and allowing SEMA to enter upon and take temporary access of the Property for the purpose of parking of vehicles and equipment and material storage associated with the Project will aid the Project and in turn enhance the surrounding Lewisville area.

Agreement

NOW, THEREFORE, in consideration of the above-stated Recitals, which are incorporated herein for all purposes, and on the terms and conditions hereinafter set forth, the City and SEMA do mutually agree as follows:

A. **Rental.** The City hereby leases and rents to SEMA and SEMA hereby leases and rents from the City the Property for the sum of TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) per year, for the term as set forth below which shall be paid in annual installments starting upon the date of execution of this Agreement. For each subsequent year of the Term (hereinafter defined), the annual installment for the following year shall be due upon the anniversary of the date of execution of this Agreement. For any use of the Property by SEMA past the term as set forth below, SEMA agrees to pay the City at a rate of \$1,667.00 per month or portion thereof for the continued use of the Property. The initial installment of \$20,000.00 shall be forfeit in the event of early termination within the first year of the Term (hereinafter defined) by SEMA.

In the event that SEMA remains in possession of the Property after the expiration or termination of the Term without the execution of a new lease or lease amendment, SEMA, at the option of City, shall be deemed to be occupying the Property as a month to- month tenant, and SEMA shall be subject to all other provisions and obligations of this lease that are applicable to a month-to-month tenancy. SEMA agrees to pay the City at a rate of \$1,667.00 per month or portion thereof for the continued month to- month use of the Property. The holding over period may be cancelled by either SEMA or City upon thirty (30) days' notice to the non-cancelling party.

B. **Right of Entry and Use of the Property.** SEMA and its employees, agents, contractors, successors and assigns have the right to access the Property for the purpose of parking of vehicles and equipment and material storage associated with the Project during the term of this Agreement. This right of entry upon and use of the Property is conditioned strictly upon the following:

1. The term of this Agreement begins on the date of execution and expires upon the earlier of either (i) completion of the Project or (ii) seven hundred thirty (730) days from execution of this Agreement by both Parties (Term). Either party may terminate this Agreement for any or no reason upon sixty (60) days' written notice to the non-terminating party. The City may terminate this Agreement upon thirty (30) days' written notice in the event of a default by SEMA Construction Inc. Any one or more of the following shall constitute an event of default under this Lease:

a. SEMA fails to pay any amount it is obligated to pay hereunder within ten (10) days of when payment is due;

b. SEMA fails to comply with any other term, provision, condition, or covenant of this Lease and such failure continues for a period of ten (10) days after City's written notification to SEMA of such failure; or, in the event such default is otherwise not cured within twenty (20) days;

c. SEMA vacates, with or without notice, the Property or any material portion thereof;

d. Any petition is filed by or against SEMA under any section or chapter of the current federal bankruptcy laws;

e. SEMA becomes insolvent or makes a transfer in fraud of creditors;

f. SEMA makes an assignment for the benefit of creditors; or

g. A receiver is appointed for SEMA or any of the assets of SEMA.

2. SEMA agrees take possession of the Property and accept the Property for SEMA's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis. SEMA acknowledges and agrees that City has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (1) the value, nature, quality, or condition of the Property, including without limitation, the title, soil, hydraulics, zoning, platting, and utilities, (2) the suitability of the Property for any and all activities and uses which SEMA may conduct thereon, (3) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, and (4) any other matter with respect to the Property.

3. SEMA agrees to fully restore and level the surface of the Property to, as nearly as can reasonably be done, the same condition as same was prior to any of SEMA's operations so that there will not be any permanent mounds, ridges, sinks, or trenches left by any of SEMA's operations and clean up the workspace area in a good and workmanlike manner.

4. SEMA agrees to fully restore all driving surfaces drainage or irrigation ditches, canals and

any other improvements of the City, if any, to at least as good a condition as same were prior to any of SEMA operations.

5. SEMA agrees to fully and promptly restore and replace any and all damage done to any fences of the City in exercising any of the rights granted herein.

6. SEMA agrees to restore or replace any and all damage to fences, trees, irrigation installations and other improvements of the City, or its tenants on said Property which may arise from SEMA operations.

7. SEMA agrees that its operations will be carried out in conformance with Exhibit B, attached hereto and made a part of this Agreement. No permanent or temporary buildings or roofed structures will be erected on the Property, and there will be no grade changes to the surface of the Property; however, flex base or gravel may be added to stabilize the surface as necessary. Access will be made via the existing driveway, and no permanent modifications to the existing driveway will be made. No utility service will be permitted on the Property with the exception of electrical service for security lighting. SEMA shall be responsible for all electrical service charges supplying the Property during the Term.

8. SEMA agrees to allow City, upon reasonable prior notice to SEMA, to inspect the Property during SEMA's normal business hours at City's discretion, to ensure compliance with SEMA's responsibilities as set out in this Agreement. City agrees to give SEMA written notice of any observed defects and any need for repairs to the Property and to provide SEMA with a reasonable opportunity to make such repairs. SEMA agrees to exercise reasonable diligence in making repairs so as to not lay waste to the Property. SEMA agrees to maintain records of any materials stored on the Property for the duration of the Term, and agrees to allow City to review such records upon request.

9. Throughout the term of this Agreement, SEMA shall carry, at its sole cost and expense, insurance as indicated in Exhibit C and include the City of Lewisville as an additional insured.

10. SEMA shall comply with all applicable local, state, or federal laws, ordinances, rules and regulations, including but not limited to TCEQ rules and regulations.

11. SEMA AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS

OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SEMA'S EXERCISE OF ITS RIGHTS GRANTED HEREIN, SEMA'S BREACH OF ANY OF THESE TERMS AND CONDITIONS, OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY SEMA, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN SEMA'S EXERCISE OF ITS RIGHTS GRANTED HEREIN; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF SEMA AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO SEMA'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY. ANY INDEMNIFICATION AGREED TO BY THE CITY IS ONLY TO THE EXTENT ALLOWED BY LAW.

12. In case City shall, without fault on City's part, be made a party to any litigation commenced by or against SEMA or relating to this Agreement or the Property, SEMA shall pay all

costs and expenses, including reasonable attorney's fees, incurred by or imposed upon City by and in connection with such litigation; and SEMA shall pay all costs and expenses including reasonable attorney's fees that may be incurred by City in enforcing any of the covenants and agreements contained in this Agreement and the amount of all such costs and expenses and reasonable attorney's fees, if paid by City herein, shall be additional rental due from SEMA to City.

13. In accordance with Texas Government Code Section 2252.909, SEMA shall:

a. If applicable, in each contract for the construction, alteration, or repair of an improvement to the Property, SEMA shall include a condition that the contractor (i) execute a payment bond that conforms to Subchapter I, Chapter 53 of the Texas Property Code; and (ii) execute a performance bond in an amount equal to the amount of the contract for the protection of the City and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents; and

b. If applicable, provide to the City a notice of commencement consistent with Texas Government Code Section 2252.909 at least ninety (90) days before the date the construction, alteration, or repair of any improvement to the Property begins. On or before the tenth (10th) day after the date the City receives a notice of commencement hereunder, the City may notify SEMA that the construction, alteration, or repair may not proceed.

14. SEMA may not assign, encumber, or convey this Agreement or sublet the Property or any part thereof without the prior written consent of City.

15. In the event that SEMA shall become incompetent, bankrupt, or insolvent, or should a guardian, trustee, or receiver be appointed to administer SEMA's business or affairs, neither this Agreement nor any interest here shall become an asset of the guardian, trustee or receiver, and in the event of the appointment of any guardian, trustee, or receiver, this Agreement shall immediately terminate and end.

16. SEMA shall not allow any lien or claim of lien to be made or allowed to remain against the Property or any improvements thereon, nor shall SEMA attempt to encumber or grant any lien against the Property or any improvements thereon.

17. SEMA shall not occupy or allow the Property to be occupied for any purpose deemed extra hazardous because of the threat of fire or otherwise. Normal construction activities including, but not limited to, material storage, stockpiling, welding, and hoisting to take place onsite. All work to follow applicable Occupational Safety and Health Administration (OSHA) guidelines.

18. One or more waivers of any covenant, term, or condition, of this Agreement by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant, term, or condition: nor shall any delay or omission by either party to seek a remedy for any breach of this lease or to exercise a right accruing to such party by reason of such breach be deemed a waiver by such party of its remedies or rights with respect to such breach. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any similar act.

19. This Agreement constitutes the full and final expression of the agreement between SEMA and City, throughout the entire Term and any extension thereof, and it may not be amended except by written instrument signed by both Parties.

20. Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same, to the address thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notification, the addresses of the Parties shall be as follows:

If to SEMA, to: SEMA Construction, Inc.
Attn: Art Cooper
7353 South Eagle Street
Centennial, CO 80112

If to City, to: City of Lewisville
Attn: City Engineer
151 W. Church Street

Lewisville, Texas 75057

21. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.

22. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

(SIGNATURES ON FOLLOWING PAGE)

WITNESS THE EXECUTION HEREOF, this _____ day of _____, 2024.

CITY OF LEWISYILLE

BY: _____
Claire Powell, City Manager

BY: _____
Thomas Harris III, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney



SEMA CONSTRUCTION, INC.

BY: [Signature]

NAME: T. Brett Ames

TITLE: V.P.

ACKNOWLEDGEMENT

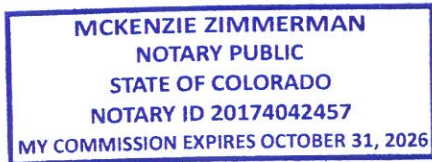
STATE OF Colorado §

§

COUNTY OF Arapahoe §

Before me, the undersigned Notary Public, personally appeared T. Brett Ames, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he/she executed the instrument for the purposes and considerations expressed in it, doing so as V.P. of SEMA Construction, Inc., a Colorado corporation, and on its behalf.

Given under my hand and seal of office on this 17th day of June, 2024.



Notary Public, State of Colorado

Printed Name: McKenzie Zimmerman

Notary ID No.: 20174042457

EXHIBIT A

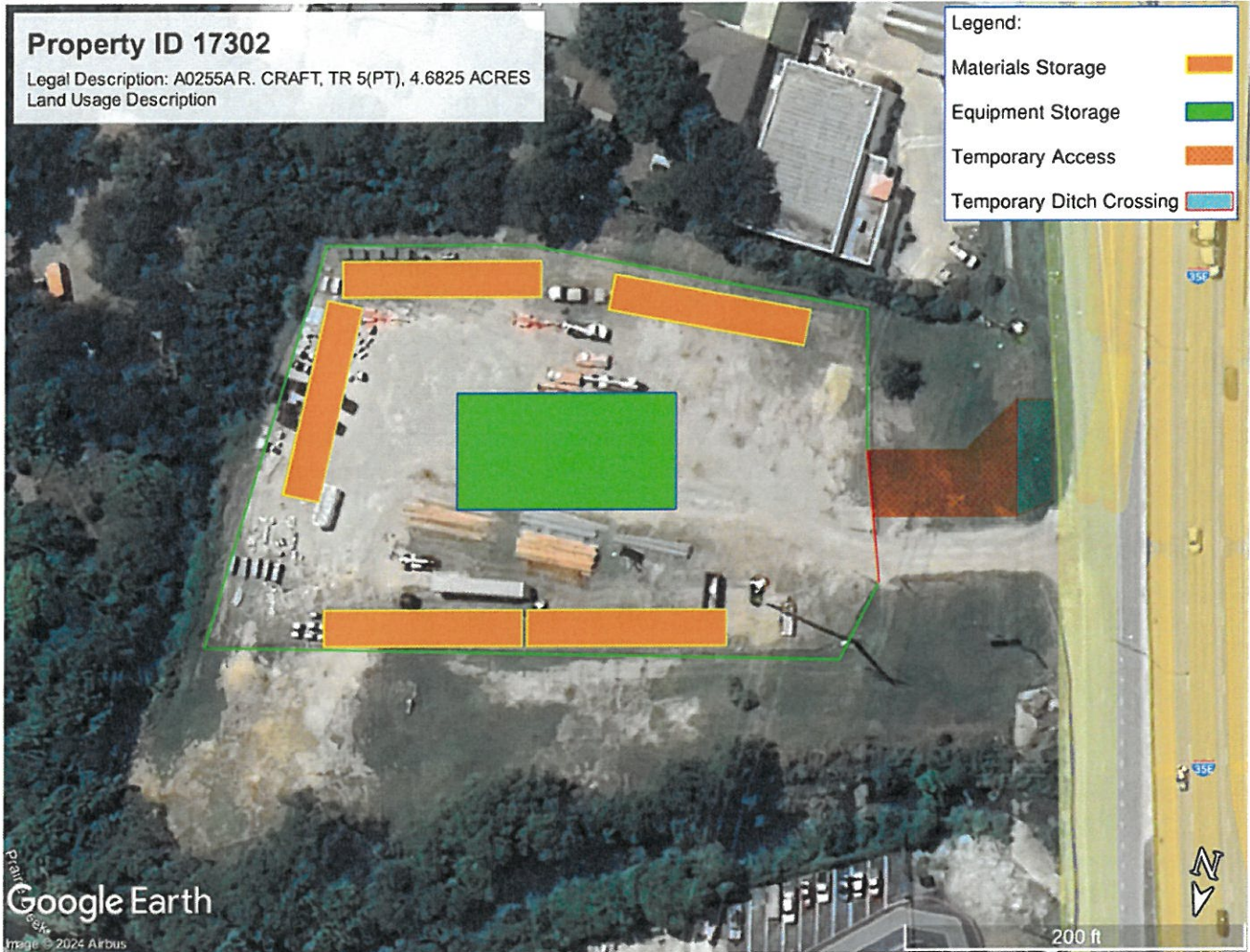


EXHIBIT B

TEMPORARY EQUIPMENT YARD FACILITY DETAILS

- A. Delivery, storage, pickup and assembly of construction materials required for the construction of TXDOT IH35E/FM1171 Reconstruction Project including but not limited to:
 - a) ground anchors, concrete barrier, steel girders, concrete and plastic pipe, traffic signal poles and illumination poles.
- B. SEMA will work between the hours of 6:00 a.m. and 8:30 p.m. Monday through Friday from June 1 to September 30; between 7:00 a.m. and 8:30 p.m. Monday through Friday from October 1 to May 31; between 8:00 a.m. and 8:30 p.m. on Saturday; and between 10:00 a.m. and 8:30 p.m. on Sunday.
- C. Occasional night work will be required, SEMA will not begin night work unless notification sent and concurrence received from the City within 48 hours of planned night work.
- D. Certain assembly activities will require cranes on site.
- E. Deliveries will be completed via heavy duty trucks or light duty trucks.
- F. Temporary 6' chain link fence will be installed for security purposes. All City permits will be obtained prior to installation.
- G. Temporary lighting may be installed for security purposes, if utilized lights will face to the North to avoid spill over to the South. All City permits will be obtained prior to installation.
- H. Temporary ditch crossing will be installed next to existing driveway for truck ingress/egress, any implementations will be removed upon completion of construction work. Drainage ditch to be regraded and revegetated by SEMA prior to demobilization from leased site. All City permits will be obtained prior to installation.
- I. SEMA agrees to remove, haul off and dispose of the existing pole sign currently located on the subject property within 60 calendar days of the execution date of the lease agreement.

Acknowledged & Accepted:

SEMA Construction, Inc.

Signed: Digitally signed by Steven C Mills

Name: DN: cn=Steven C Mills, o,

Title: ou=Corp. V.P.,

Date: email=smills@sema.inc, c=US

Date: 2024.06.26 07:41:54 -04'00'

Exhibit C

INSURANCE REQUIREMENTS **LESSEES (NO AUTO RISKS) AND SPECIAL EVENTS**

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas and Employers' Liability insurance. Workers' Compensation insurance is only required if Lessee has paid staff on site.

B. MINIMUM LIMITS OF INSURANCE

Lessee shall maintain limits no less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage.
2. Workers' Compensation and Employers Liability: Workers' Compensation Statutory Limits as required by the Labor Code of the State of Texas and Employers Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain or be endorsed to contain the following provisions:

1. General Liability
 - a. The City, its officers, officials, employees, boards/commissions and volunteers are to be covered as "additional insured" as respects: liability arising out of premises owned, occupied or used by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. Endorsement

naming City as additional insured must be submitted with proof of insurance. The coverage shall include defense of claims against the City as additional insured.

- b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- c. Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.
- d. Lessee's insurance shall be primary and non-contributory as respects to the City, its officers, officials, employees or volunteers.

2. Waiver of Subrogation — All Coverages

Each insurance policy required by this exhibit shall waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.

5. Notice of Cancellation

Each insurance policy required by this exhibit shall be endorsed to state the coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City, or ten (10) days prior written notice for non-payment of premium.

E. ACCEPTABILITY OF INSUREES

City prefers that insurance be placed with insurers with a Best's rating of A-:VI or A or better by Standard and Poor's.

F. VERIFICATION OF COVERAGE

Lessee shall furnish the Agency with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. The certificates are to be received and approved by the City before the lease commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. FOOD AND/OR LIQUOR COVERAGE

If food is being provided to attendees or participants, Lessee must provide Product Liability in the amounts listed above. If liquor is being served, Lessee must provide Host Liquor Liability, unless lessee is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages, wherein a minimum \$1,000,000 Liquor Liability Policy will be required.

H. SPECIAL EVENTS

Insurance provided by the Lessee must cover all operations of the Special Event including but not limited to; participants, subcontractors, vendors, exhibitors, volunteers, etc. If the policy of the

Lessee excludes any activity or group involved in the Special Event, the Lessee must provide proof of insurance as required by this agreement. Lessee must furnish separate certificates for each group or activity not included or covered by Lessee's insurance.

I. HOLD HARMLESS AND INDEMNIFICATION

THE LESSEE AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY LESSEE'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, LESSEE, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE LESSEE AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE LESSEE'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.