

## **AGREEMENT**

THIS AGREEMENT made and entered into by and between McCLEARY SECOND GROWTH & BEAR FESTIVAL, INC., hereinafter referred to as "FESTIVAL"; and the CITY OF McCLEARY, hereinafter referred to as "CITY".

### **R E C I T A L S:**

1. The FESTIVAL is a non-profit entity organized to accomplish a number of purposes, including the promotion of tourism, trade, and business activity within the corporate limits of the CITY. Its state identification number is 601053245. Its mailing address is 100 South 3<sup>rd</sup> Street, McCleary, Washington 98557.

2. The CITY is a municipal corporation situate in the County of Grays Harbor, State of Washington.

3. The FESTIVAL has contacted the CITY in relation to the FESTIVAL'S presentation of the tourist event commonly known as the Bear Festival, an event which has been held for many years, as well as other tourist and trade promotion.

4. At the June 14, 2017, meeting of the City Council, the FESTIVAL, by and through its authorized representative, AIMEE ROWLAND, submitted a request to utilize certain property of which the CITY is the owner, as well as to receive certain assistance from the City in terms of implementation of certain of its

activities. The primary uses of the property and involvement of City staff, which are more fully detailed in that certain submission attached hereto as Exhibit 1, are as a staging site for the parade, location of vendors, and associated activities. This exhibit reflects a program of event scheduling and utilization running between July 6th and July 9th, 2017.

5. Subject to compliance with the provisions of this contract, as the result of action taking at its meeting of June 26, 2017, the City Council authorized the CITY to undertake certain actions at the request of the FESTIVAL, as well as the execution of this contract by the Mayor.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

SECTION I: The FESTIVAL may utilize, for the purpose of the programs more fully detailed upon Exhibit #1, the specified portions of the right of way and parcels held by the CITY. This utilization is conditioned upon and subject to compliance with the conditions set forth in Section II. The period of authorized use shall run from 3:00 P.M. on the 6th day of July, 2017, through 9:00 p.m. on the 9th day of July, 2017.

SECTION II: CONDITIONS OF USE: FESTIVAL's utilization of the CITY's property, as requested in Exhibit #1 is conditioned upon the FESTIVAL's compliance with the following terms and conditions:

A. Providing to the CITY, by and through the Clerk-Treasurer, written proof of general hazard insurance of an

occurrence nature having policy limits of \$1,000,000/\$1,000,000, showing the CITY as a named insured thereon, such proof to be satisfactory to the Mayor and the authorized representative of the City's insurer.

B. Taking such steps as may be necessary to assure that neither any participant in nor spectator of the event shall, while upon the property the utilization of which is authorized in relation to this event:

1. Consume or allow to be consumed any alcohol except as may be allowed by any permit issued by the Washington State Liquor Control Board.

2. Perform any unlawful act.

C. Without the prior written authorization of the Director of Public Works, make any modifications or additions to the site.

D. Make provision for and carry forth clean-up programs so that, within 18 calendar hours of the completion of the actual event, any waste, debris, and other litter resulting from or associated with the event will have been cleaned up. Further, to the extent deemed necessary and appropriate by the Director of Public Works, restore the site utilized during the event to the condition which existed prior to the commencement of use by the FESTIVAL.

E. Cooperate fully with the representatives of the Police and Public Works Department, as well as of the Fire Department, in assuring the safety of the attendees.

F. The FESTIVAL shall defend, indemnify, and hold the CITY, its officers, officials, employees, and volunteers, harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the FESTIVAL and the CITY, its officers, officials, employees, and volunteers, the FESTIVAL's liability hereunder shall be only to the extent of the FESTIVAL's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the FESTIVAL's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been *mutually negotiated* by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

G. Provide to the Clerk-treasurer the names and telephone numbers of individuals authorized to act upon behalf of the FESTIVAL.

SECTION III: RELATIONSHIP OF THE PARTIES

As to the relationship between the CITY and the FESTIVAL, the FESTIVAL's status in relation to CITY is that of an

independent contractor. It is agreed the FESTIVAL shall be responsible for paying any taxes which may be required under any applicable law in relation to the activities to be performed under the provisions of this contract.

SECTION IV: GENERAL PROVISIONS:

A. The FESTIVAL specifically agrees and understands that compliance with all terms and conditions set forth in Section II of this Agreement are necessary for the public health and safety. In the event the CITY gives the FESTIVAL written notice of a breach of the FESTIVAL's responsibilities under this Agreement, the FESTIVAL shall immediately take the necessary corrective steps. In the event of any failure to so correct, the CITY may revoke the right to use and occupy the areas covered under this Permit: PROVIDED THAT, if, in the sole discretion of the CITY, the breach constitutes an immediate danger to life, health, or property, the CITY may immediately revoke the right to use and occupy and take such other steps to reduce or eliminate the danger as it may deem reasonably necessary. Such revocation shall not give rise on the part of the FESTIVAL to a claim of any nature whatsoever and shall not relieve the FESTIVAL of the responsibility to restore the covered areas to their original condition specifically by the removal of any trash or debris.

B. In the event the CITY must expend monies as a result of the failure of the FESTIVAL to comply with any term or condition of this Permit, including by way of representation the responsibility to clean up the area after the event, then the

FESTIVAL shall reimburse the CITY for those monies within 30 calendar days of the submission of a bill therefor.

C. For purposes of contact as to implementing the utilization authorized under this agreement, the appropriate contact for the CITY shall be Todd Baun, the CITY's Director of Public Works, or such other persons as he may designate in writing. For the FESTIVAL, William Roundtree or such other person he may designate in writing shall be deemed to be the appropriate contact person.

D. Each party has had the opportunity to have this agreement reviewed by counsel of its choice prior to its execution.

E. Each individual executing this Agreement represents that she or he is authorized to execute the same upon behalf of the party they represent.

F. That in the event of any dispute arising out of this Agreement which is not resolved between the Parties, any litigation shall be commenced in the Courts of the County of Grays Harbor. Further, in the event of such litigation, in addition to any other relief which may be granted the prevailing party, it shall be entitled to an award of reasonable attorneys' fees and costs.

G. NOTICES:

1. For purposes of this Agreement, a notice required hereunder shall be deemed to have been given on the earlier occurring of the date of personal service of the written notice

upon the recipient party or the third day following the date of posting of the written notice in the United States Postal Service, First Class, postage prepaid, addressed to the recipient at the addresses stated below:

THE FESTIVAL:

McCLeARY SECOND GROWTH & BEAR FESTIVAL, INC.  
c/o Tanya Beavers, Co-chair  
P.O. Box 408  
McCLeary, Washington 98557  
Attn: Aimee Rowland

CITY OF McCLEARY:

CITY OF McCLEARY  
P. O. Box D  
McCLeary, Washington 98557  
Attn: Wendy Collins

2. A notice shall not be deemed to have been given unless it is given in writing.

EXECUTED this 28<sup>th</sup> day of June, 2017.

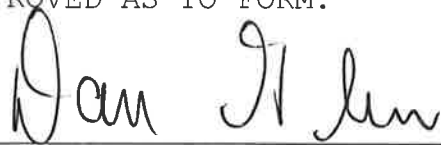
CITY OF McCLEARY:

  
\_\_\_\_\_  
BRENT SCHILLER, Mayor

ATTEST:

  
\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

Executed this 29<sup>th</sup> day of June, 2017

McCLEARY SECOND GROWTH & BEAR FESTIVAL, INC.

Tanya Beavers, its Co-chair  
TANYA BEAVERS OR WILLIAM ROUNDTREE

Signature on next page, its Secretary  
AMANDA FREDRICKSON

STATE OF WASHINGTON )  
  ): ss.  
GRAYS HARBOR COUNTY )

I certify that I know or have satisfactory evidence that Brent Schiller and Wendy Collins are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath, stated that they were authorized to execute the instrument and acknowledged it as the Mayor and Clerk-Treasurer, respectively of the City of McCLEARY to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 29<sup>th</sup> day of June, 2017.



Lindsay Blumberg  
NOTARY PUBLIC IN AND FOR THE STATE  
OF WASHINGTON, Residing at:  
My appointment expires:

STATE OF WASHINGTON )  
  ): ss.  
GRAYS HARBOR COUNTY )

I certify that I know or have satisfactory evidence that Tanya Beavers is the person who appeared before me, and said person acknowledged that she/he signed this instrument and acknowledged it to be her/his free and voluntary act for the uses and purposes mentioned in the instrument and within the scope of granted authority.



