

LEASE AGREEMENT
COF Contract No. 2014-0281

**LEASE AGREEMENT FOR MULTIPURPOSE EQUESTRIAN ARENA, HORSE
STABLES, PADDOCKS AND ARENA EVENT SPACE AT THE PARK AT
HARLINSDALE FARM**

This Lease Agreement ("Agreement") is entered into on this the _____ day of _____, 201__ by and between the City of Franklin Parks, Tennessee ("City") and Friends of Franklin Parks, LLC ("Lessee").

WHEREAS, the City owns, operates and maintains certain facilities for equestrian & special events and other public uses, which facilities are generally known as the Park at Harlinsdale Farm ("Harlinsdale Farm"), 239 Franklin Road, Franklin, Tennessee within the City's corporate limits; and

WHEREAS, the City desires to make available to Lessee, and Lessee desires to use a portion of Harlinsdale Farm, which will include constructing a multipurpose arena, arena event space, paddocks, horse stables, and a concessions building, for programs under the direction of the Lessee; and

WHEREAS, the City and Lessee acknowledge that there exists a Master Plan adopted by the City setting forth the anticipated uses of Harlinsdale Farm; and

WHEREAS, the City and Lessee acknowledge that there exists on Harlinsdale Farm a Conservation Easement ("Conservation Easement"), which was granted by the City to The Land Trust for Tennessee, Inc., for the purpose of permanently conserving the Conservation Values of Harlinsdale Farm; and

WHEREAS, the City and Lessee desire to enter into a Lease Agreement which will honor both the Master Plan and the Conservation Easement.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The parties acknowledge the above-stated recitals and they are incorporated into this Agreement as if fully restated herein.
2. **Premises.** The City hereby leases to Lessee and Lessee hereby leases from the City approximately five (5) acres of Harlinsdale Farm as shown on the attached Exhibit A.

Lessee shall construct all improvements on the Premises at its sole cost. The improvements permitted to be constructed are a multipurpose arena; arena event space; paddocks; and a concessions building, as shown on Exhibit B, which is incorporated as if set forth fully herein. Lessee shall comply with all City and/or State of Tennessee rules and regulations to construct such improvements, such as, but not necessarily limited to, obtaining site plan approval and building permits. Lessee shall select all

contractors and suppliers. The City shall approve all plans and specifications for material renovations and alterations, subject to reasonable conditions.

3. **Lease Term.** The term of this Agreement shall be for five (5) years commencing on January 1, 2015 ("Initial Period") and may be renewed for an additional three (3) year term ("Renewal Period") if agreed to by the parties so long as written notice of renewal is given by Lessee to the City within ninety (90) days of the expiration of the Initial Period. Lessee shall have the option to renew lease for an additional three (3) year term ("Second Renewal Period") if agreed to by the parties so long as written notice of renewal is given by Lessee to the City within ninety (90) days of the expiration of the Renewal Period term.
4. **Use of Premises.** Lessee shall have the right to occupy and use the Premises for the purpose of equestrian programs and events contained solely within the Premises consistent with Master Plan and Conservation Easement. Lessee shall use and occupy the Premises in a safe and careful manner and in compliance with all applicable laws, rules and regulations prescribed by the City and other governmental authorities as may be in force and effect during the term of this Lease. Lessee shall coordinate the use of the Premises by organizations and individuals on a daily usage basis for horse shows, horse competitions exhibitions, and programs and subject to the Special Events Application which is attached as Exhibit C.
5. **Covenant Not to Injure; Renovations and Alterations.** Lessee shall not do any act or suffer any act during the term of this Agreement, which will in any way deface, alter or injure any part of the Premises, excepting normal wear and tear. Lessee shall allow no lien to be placed against the Premises or the Building. All alterations, additions, repairs, replacements and improvements made to or upon the Premises shall be deemed to be part of the Premises and shall become the property of the City upon the expiration or termination of this Lease; provided, however, that trade fixtures, machinery, and equipment that are installed by Lessee and removable without materially injuring the Premises shall remain the property of Lessee.

City's Right to Access. The City reserves the right to access the Premises for private or City-sponsored events. This will be on a limited basis and the City will not unreasonably interfere with existing programs of Lessee. The City at all reasonable times may enter to view the Premises and to make repairs which the City may see fit to make. Premises will be closed by the City for maintenance during the entire months of December and January of each year. Additionally, there will be a period of time during either June, July or August where Premises will be closed by City for maintenance. This time period shall be mutually agreed upon by the Parties.

6. **Rent.** Lessee will pay the City a total sum of One Dollar (\$1.00) as rent for the years of 2015 and 2016, to be paid on December 31 of each year. Rent for the years of 2017, 2018 and 2019 shall be in an amount based on the following formula: ten percent (10%) of all gross revenue generated by events held by Lessee on the Premises. Commencing January 15, 2018 (and on January 15 each year thereafter), Lessee shall submit to the City a financial statement clearly showing the revenue generated from each event held at the Premises the preceding calendar year. The financial statement shall also include the calculation of rent owed to the City. Payment of rent shall be due at the same time.

7. **Lessee's Covenants.**

The Lessee:

- a. Shall on or before January 31 each year furnish to the Parks Department a current list of the Lessee's board of directors, officers, employees, reoccurring volunteers and contracted parties, said list to include current addresses, emails addresses and phone numbers.
- b. Shall maintain throughout the term of this agreement and any renewals thereof, the Lessee's non-profit status.
- c. Shall obtain and keep current, at its sole cost, all federal, state and local permits and approvals necessary for the use of the Premises.
- d. Shall coordinate and schedule all events with the Programming Division of the Parks Department, including maintaining a joint calendar updated weekly by the both Lessee and the City. The Lessee shall have the right to schedule events on the Premises. The Lessee shall give priority to equestrian activities when scheduling use of Premises. The City, however, may limit the number of events should the size and/or quantity generate significant negative impacts to the park and/or community. The Lessee may charge a fee for participation in the Lessee's events and/or multipurpose arena use, provided however, that any fee charged is reasonable including appropriate allowances by Users without sufficient funds to pay the fees
- e. Shall not interfere with or hold simultaneous events within 48-hours of annual events already established by the City for the Park at Harlinsdale Farm (e.g., 4th of July, Family Day, or other large-scale event approved by the City). The City shall coordinate with Lessee to utilize the Premises during these events and may on occasion request participation from Lessee to enhance these events for the general public.
- f. Shall coordinate with the City regarding special & athletic events already established by the City for Harlinsdale Farm (i.e., those events that have obtained a Special Event permit from the City). The City shall coordinate with Lessee to utilize the Premises during these events and may on occasion request participation from Lessee to enhance these events. Shall coordinate with the City in the event of simultaneous events. If events are to operate simultaneously (Lessee and other City-Permitted Events), a joint meeting with each party shall meet 30-days prior to the event taking place to strategically work through traffic (ingress & egress), refuse collection, parking, insurance, public safety concerns and start/end times.
- g. Shall not close or cause to be closed Harlinsdale Farm without the City's permission. At no time shall Harlinsdale Farm close to the public for a private event on behalf of the Lessee unless approved by the City through its standard special events process as provided by the Franklin Municipal Code. Lessee shall not assume sole custody of the entire 200-acres at any time as Harlinsdale Farm is open to the general public and operated at all times as a City park.
- h. Shall notify City immediately of any damage to the Premises.
- i. Shall at the expiration of the said term peaceably yield up to the City the Premises and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear excepted.

8. **City's Covenants.**

The City shall:

- a. Prepare the landscape surfaces of the Premises and maintain them free of ruts and other open and obvious hazards. Maintenance shall include irrigation/water cannon maintenance, and maintaining proper grading of the Premises, and general maintenance, with the exception that the Concessions Building will be solely the responsibility of Lessee.
 - b. Keep the exterior buildings, mechanical, electrical and plumbing, in such repair as the same are at the commencement of the Lease or as may be put in during the continuance thereof, reasonable wear and tear only excepted.
 - c. Provide appropriate staffing to support maintenance and event programming of the Premises.
9. **Concessions.** The Lessee has rights for the use of the Concessions Building that will be located at the Park at Harlinsdale Farm. Lessee shall be responsible for cleanliness and overall appearance of the concession area. The parties agree that if the City sponsors or permits other special events, the Lessee reserves the first right of refusal to sell concessions for that activity, with the rights of those concessions awarded to Lessee; however, should Lessee decline to sell concessions the City would reserve the right to sell concessions, (Lessee's equipment not to be used). Large special events sponsored by the City may require concession offerings in addition to those supported by Lessee, in which case the City will notify Lessee in advance. Any sublease of the Concessions Building shall be approved by the City.
10. **Programming Events.** Any special event hosted or sponsored by Lessee must be contained within the Premises. The Lessee has the right to program events within the Premises without prior approval from the City; however, the City may limit the number of events should the size and/or quantity generate significant negative impacts to Harlinsdale Farm and/or community. Harlinsdale Farm shall not close to the public without prior approval of the City through its special events process as provided by the Franklin Municipal Code.
11. **Alcohol - Serving & Selling.** The City does not permit alcohol consumption at Harlinsdale Farms outside of a permitted event that meets the following criteria. Lessee may serve or sell alcoholic beverages may only by an ABC licensed caterer or after having received a Special Occasion Permit from the Tennessee Alcoholic Beverage Commission, or after having received a Beer Permit from the City of Franklin Beer Board, as applicable. Lessee must comply with all state and local rules and regulations for sale and service of alcohol, including open container and permitting rules. When alcohol is served, the Lessee is required to add the City of Franklin as the additional insured and include an Alcohol Liability Insurance Rider to the Certificate of Liability showing coverage of a minimum of \$1,000,000. The term "sold" refers to: (1) cash bar, and (2) events that charge admission and serve, give away, or sell alcohol during the event, including previous ticket sales. The Lessee must take all reasonable precautions to ensure the safety of all guests with regard to alcohol consumption. The City reserves the right to evict from the premises any member of any party, who because of intoxication or other consideration, may be found to be creating a disturbance or threatening the peace, tranquility, or safety of guests or property. Events with alcohol that have attendance over 200 people will require at least one paid City of Franklin Police officer on the Premises throughout the entirety of the event.

12. **Indemnification and Hold Harmless.** Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from:
- a. Any claims, damages or suits for loss of or damage to property, including loss of use thereof, or injuries, including death to persons and from all judgments recovered therefore and from all expense in defending said claims or suits, including court costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Lessee, its officers, employees and/or agents, including its sub or independent contractors and patrons, in connection with this Lease Agreement.
 - b. Any claims, damages, penalties, costs and attorney fees arising from any failure of Lessor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
 - c. Lessor will not indemnify, defend or hold harmless in any fashion the Lessee from any claims arising from any failure, regardless of any language in any attachment or other document that the Lessee may provide.
 - d. Any claims, damages, penalties, costs and attorneys' fees arising from any action brought against the City of Franklin by any of Lessee's officers, employees and/or agents arising out of any injury incurred by such officer, employee and/or agent in the course of the performance of this contract, regardless of the cause of such injury.
 - e. Lessee shall pay Lessor any expenses incurred as a result of Lessee's failure to fulfill any obligation in a timely manner under this Lease Agreement.
- Enforcement Expenses.** In the event it becomes necessary for Lessor to employ an attorney to enforce collection of the rents agreed to be paid, or to enforce compliance with any of the covenants or agreements herein contained, Lessee shall be liable for reasonable attorney's fees, costs and expenses incurred by the Lessor.

13. **Insurance.** TO BE COMPLETED BY BOTH PARTIES PRIOR TO FINALIZING LEASE AGREEMENT.

14. **Default, Insolvency, etc. of Lessee.** If Lessee shall neglect or fail to perform and observe any of the covenants in this instrument, which on its part are to be performed and such default shall continue for a period of thirty (30) days after the mailing of a written notice, postage prepaid from the City to the Lessee specifying such default, or the Lessee shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of any of its property for the benefit of creditors, then, and in any of the said cases, the City or those having their estate in said premises, lawfully may immediately or at any time thereafter, and while such neglect or default continues and without further notice or demand, enter into and upon the premises or any part thereof in the name of the whole and repossess the same as of their former estate and expel the said Lessee and those claiming under it, and remove their effects (forcibly if necessary) without being taken or deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant and, at the Lessor's election, the said term shall cease and be ended.

15. **Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of

principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

16. **Termination.** This Agreement may be terminated by either party, with or without cause, upon one hundred eighty (180) days written notice to the other party at the address listed below.
17. **Assignment.** Lessee shall not assign this agreement in its entirety without the prior written consent of the Board of Mayor and Aldermen.
18. **Notice.** Any notice provided pursuant to this Lease, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or such other address as either party may in the future specify in writing to the other):

LESSOR:

City of Franklin
P.O. Box 305
Franklin, Tennessee 37065-0305
Attn: Lisa R. Clayton, Parks Director

LESSEE:

Friends of Franklin Parks, LLC
Address
Franklin, Tennessee 37065
Attn: Monty McInturff, President
Franklin Tomorrow
Address
Franklin, Tennessee
Attn: Mindy Tate, Executive Director, Franklin Tomorrow

Either party may by written notice to the other change the address to which subsequent notice shall be directed.

19. **Governing Law.** The validity, construction and effect of this Lease and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the City may provide. Any language specifying any other governing law included in the Lease is deleted and is null and void.
20. **Venue.** Any action between the parties arising from this agreement shall be maintained in the courts of Williamson County, Tennessee.

21. **Tennessee Public Records Act.** The Lessee understands that the City is subject to the Tennessee Public Records Act. This may require City to give requested documents to members of the public or press including, but not limited to a copy of this Lease. Compliance by City with the Open Records Act shall not be a breach of the Lease.
22. **Waiver.** No waiver of any provision of this Lease shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default
23. **Severability.** Should any provision of this Lease be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Lease.
24. **Accident & Incident Report Forms.** Lessee agrees to make the attached Accident Report Form and Incident Report Form a part of this Lease Agreement. The Accident Report Form & Incident Report Form is to be made available to all affiliated with the Lessee's organization with instructions on its use and purpose, specifically, that any and all accidents and incidents are to be reported on this form and submitted to the Franklin City Parks Department no later than 24 hours after an accident or incident.
25. **Conservation Easement.** The City and Lessee acknowledge and understand that the Lease Agreement is both subordinate to and subject to the terms of the Conservation Easement.
26. **Entire Agreement.** This Lease Agreement and its attachments contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this Lease Agreement shall be valid or binding; and this Lease Agreement may not be enlarged, modified or altered except in writing signed by the parties and attached hereto.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their names to be signed to multiple copies of this Lease Agreement as of the day and date last written below in Acknowledgements, all copies constituting, however, but one Lease Agreement.

CITY OF FRANKLIN, TENNESSEE
Lessor

By: _____

DR KEN MOORE
Mayor

Date: _____

FRIENDS OF FRANKLIN PARKS, LLC
Lessee

By: _____

Title: _____

Date: _____

Approved as to form by:

Approved as to form by:

Attorney for City of Franklin

Attorney for Friends of Franklin Parks, LLC

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