

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**LICENSE AGREEMENT BETWEEN
EL PASO COUNTY AND FRED LOYA
PARTNERS, LP,
A TEXAS LIMITED PARTNERSHIP**

This License Agreement is entered into this _____ day of _____, 2022, by and between the COUNTY OF EL PASO, TEXAS (“County”) and FRED LOYA PARTNERS, LP, a Texas limited partnership (“Licensee”). This License shall be effective on the date executed by the El Paso County Judge.

Grant of License: The County owns a public recreational facility at Ascarate Park (“Ascarate”). In accordance with this License the County is granting to Licensee a non-exclusive right to use a portion of Ascarate for a public holiday light display (“Event”). The area to be used is referred to in this License Agreement (“License”) as the “Licensed Area”.

WHEREAS, Licensee has offered to co-sponsor a public holiday light show at Ascarate Park with County during the months of November 2022, December 2022, and January 2023, with the name of “Fred Loya Partners and El Paso County present: Holiday Lights on the Lake”; and

Licensee has expressed an interest in providing, setting up and exhibiting Licensee owned light displays (“Licensee fixtures”) to decorate Ascarate Park during the winter holiday period; and

County owned light displays and Licensee owned light displays will be incorporated together during the holiday light show at Ascarate Park; and

County and Licensee agree to jointly participate in the development and presentation of an outdoor holiday light show at the County’s Ascarate Park.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth in this License, the parties mutually agree to the following:

1. **Loan of Licensee owned displays**: Licensee agrees to loan to the County, free of charge, Licensee Equipment (defined in Section 3.1) for purposes of light displays in the License Area, as shown on the attached Exhibit 1 at Ascarate Park, for a holiday light show.
2. **Duties of the County**
 - 2.1 The County will coordinate with Licensee on the scheduling, set-up, display and logistical arrangements of County equipment. The County will be responsible for loading, unloading, assembling, disassembling, and transporting all County owned equipment.
 - 2.2 The County and Licensee will coordinate in good faith with one another regarding the planning and logistics of the holiday light show.

- 2.3 The County will transport, unload, and assemble all County owned equipment from October 17, 2022, through December 1, 2022.
- 2.4 County will accept the loan by Licensee of the use of its Licensee Equipment and donation of services from Licensee.
- 2.5 County will be responsible for providing food trucks and vendors for the duration of the holiday light show events.
- 2.6 County will disassemble and load all County owned equipment from January 7, 2023, through January 23, 2023.
- 2.7 County will provide security for the holiday displays including Licensee Equipment for 24 hours a day from October 17, 2022, through January 23, 2023. The light display schedule is categorized into two formats: “Show Days” and “Light Displays”:

Show Days: Fridays, Saturdays, and Sundays (5:00PM – 10:00PM)

- 2.7a November 25, 26, 27, 2022
- 2.7b December 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 2022
- 2.7c Total of fifteen (15) Show Days with interior of event (up to 12 officers and the exterior perimeter with up to 10 officers.)
- 2.7d Up to 12 Officers located in the interior of the License Area and up to 10 Officers located in the exterior perimeter of the License Area.

Light Displays: Mondays, Tuesdays, Wednesdays, and Thursdays (5:00PM – 10:00PM)

- 2.7e Total of twenty-four (24) Light Display Days from November 25, 2022, through January 23, 2023, with up to 2 officers (except for show days).
- 2.7f 98 days (October 17, 2022, through January 22, 2023) of 19 hours of overnight and daytime security with one officer.
- 2.8 Provide storage of County owned equipment. County equipment will be stored on County owned property.
- 2.9 County will provide an on-site Parks and Recreation employee to serve as a coordinator with Licensee during the set-up and assembly of County equipment and Licensee equipment.
- 2.10 County will allow afterhours access to Licensee to Ascarate Park for light display set-up and choreography, as needed and in coordination with the County and at times reasonably convenient to both parties.

2.11 County will provide marketing assistance and branding for the holiday light show.

3. **Duties of Licensee**

- 3.1 Licensee owns various light displays including fixtures, frames, decorations, electrical cords, wiring, animatronics, figurines ("Licensee Equipment"). Licensee agrees to loan to the County, free of charge, Licensee Equipment for purposes of light displays in the License Area as shown on the attached Exhibit 1 for a holiday light show during the time periods designated in this License.
- 3.2 Licensee will be responsible for transporting, loading, unloading, assembling and disassembling all Licensee Equipment.
- 3.3 Licensee will provide the use of light displays, equipment, and services from November 25, 2022, through January 6, 2023.
- 3.4 Licensee will provide its own personnel for the choreography, and execution of light displays and light shows.
- 3.5 Licensee will exercise a reasonable standard of care towards County equipment. If County owned equipment is incorporated with Licensee's equipment, and County equipment is damaged solely by Licensee or its employees or contractors, then Licensee agrees to pay for the County equipment repair not to exceed the County equipment's replacement value.
- 3.6 Licensee agrees that it accepts County equipment "as is." Licensee will assume the cost of all repairs to County owned equipment, subject to Section 3.5 hereof. The repair or replacement of County fixtures or equipment by Licensee does not grant any ownership in the County fixtures or equipment to Licensee and all County equipment shall remain the sole property of the County of El Paso.
- 3.7 Within two (2) days of discovery, Licensee will notify the County of instances and circumstances surrounding any loss of or damage to County equipment and will take affirmative action to minimize any further damage.
- 3.8 Licensee will disassemble and remove all Licensee Equipment beginning January 6, 2023. Licensee will complete all disassembly and removal no later than 5:00 p.m. January 23, 2023, and shall leave the License area in substantially the same condition as it was prior to Licensee's use (normal wear and tear expected). Licensee is not responsible and liable for any damage to the License Area resulting from the acts of any third party, not including Licensee's employees or contractors.
- 3.9 Licensee will provide background checks for all employees and contractors working on behalf of Licensee.

3.10 Notwithstanding anything to the contrary and subject to a separate agreement to be entered into by the Parties, Licensee will have exclusive use of the Pavilion at Ascarate from November 26, 2022, through December 25, 2022.

3.10a November 25, 2022, will be a joint VIP use at the Pavilion with Licensee and County and those guests the County invites to the joint VIP event at the Pavilion

3.11 Licensee will provide marketing assistance and branding for the holiday light show.

4. **Point of Contact**

4.1 Representative for County of El Paso

4.1a Veronica Myers, Director of Parks and Recreation Department
6900 Delta Drive; El Paso, Texas 79905

4.1b Norma Rivera Palacios, Executive Director of Public Works
800 E. Overland; Suite 407; El Paso, Texas 79901

4.2 Representative for Licensee

4.2a Jorge Briones, Chief Information Officer
1800 N. Lee Trevino; El Paso, Texas 79936

5. **Term and Termination**

5.1 Either party may terminate this Agreement, with or without cause, upon sixty (60) days written notice to the other party. Termination shall be without penalty, such that neither party shall be liable to the other for any monetary or other losses that may result. Written notice of termination shall not affect any obligation by either party incurred prior to the receipt of the termination notice. Notice shall be sent via certified mail with return receipt requested or may be hand delivered to the addresses noted below.

5.1a If Licensee terminates this Agreement during any phase of performance, Licensee agree to remove its lighting displays and other property and return the License Area to its original state prior to the commencement of the Agreement, normal wear and tear excepted. Licensee is not responsible and liable for any damage to the License Area resulting from the acts of any third party, not including Licensee's employees or contractors.

6. **Notice.** Any notice or communication required or permitted under this license agreement shall be sufficiently given if delivered by certified mail, return receipt requested, to:

County of El Paso:

Ricardo A. Samaniego, 500 E. San Antonio Ave; Suite 301, El Paso, Texas 79901
Norma Rivera Palacios, 800 E. Overland; Suite 407; El Paso, Texas 79901

Fred Loya Partners, LP

Attn. Jorge Briones, 1800 N. Lee Trevino Dr; El Paso, Texas 79936

7. **Assigns.** This agreement may not be assigned by either party in whole or in part. Licensee shall not assign, delegate, or attempt to so convey an interest in this agreement. In the event Licensee does attempt to so convey an interest in this agreement, the agreement shall be terminable by the County.
8. **Waiver.** No delay on the part of any party in exercising any right, power or privilege in this License shall operate as a waiver of any other provision, nor shall any waiver on the part of any party of any right, power, or privilege in this License operate as a waiver of any other right, power, or privilege in this Agreement.
9. **Entire Agreement.** This document expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by the parties.
10. **Amending the agreement.** The parties specifically agree any provision in this agreement may be amended or changed and must be in writing and agreed to by both parties.
11. **Indemnity.** To the extent permitted by Texas laws and Constitution, Licensee agrees to indemnify and hold harmless the County and its officers employees, and agents from and against all liabilities claims, actions, expenses (including attorneys' fees and costs related to any and such claim, action, or proceeding), obligations, losses, fines, penalties, and assessments resulting from or arising out of the sole or gross negligence or willful misconduct by Licensee, its directors, officers, employees, or agents. This indemnity expressly excludes any claims, liabilities, losses resulting from or arising out of (a) the failure of the County to perform any of its duties and obligations under this Agreement, and (b) any vehicle collision or accident, vandalism or other criminal or any other activity of any third party, not including Licensee's employees or contractors, that occurs during the term of this Agreement.
12. **Governing Law.** This agreement shall be governed by and construed in accordance with the laws of the State of Texas and is to be performed in El Paso, El Paso County, Texas. Venue shall lie in El Paso, Texas. Each party, its employees, and agents shall comply with all applicable laws in their performance under this agreement. This provision survives termination of the agreement.
13. **Electronic Signatures.** Executed copies of the signature pages of this document sent by facsimile or transmitted electronically in Portable Document Format ("PDF") or by DocuSign are treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights they may have to object to such treatment.

In witness whereof, the parties execute this Agreement.

SIGNATURE PAGES FOLLOWS

***SIGNATURE PAGE TO LICENSE AGREEMENT BETWEEN EL PASO COUNTY AND
FRED LOYA PARTNERS, LP, A TEXAS LIMITED PARTNERSHIP***

THE COUNTY OF EL PASO

By: _____

Ricardo A. Samaniego,
El Paso County Judge

Date: _____

FRED LOYA PARTNERS, LP

By: Loya Partners GP, LLC, a Texas limited
liability company

By: _____

Date: _____

Name: _____

Authorized Agent