

**EVENT AGREEMENT
THE URBAN FARM**

THIS EVENT AGREEMENT (“**Agreement**”) is made and entered into as of the date of execution, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the state of Colorado (the “**City**”) and THE URBAN FARM, a Colorado non-profit corporation, whose address is 10200 Smith Road, Denver, Colorado 80239 (“**TUF**”).

WHEREAS, TUF desires to conduct certain events at the Urban Farm, located at 10200 Smith Road, Denver, Colorado 80239, owned by the City and operated by TUF for conducting events as described in this Agreement; and

WHEREAS, in the exercise of the City’s lawful functions, the Department of Parks and Recreation (“DPR”) wishes to allow TUF to conduct the events at the Urban Farm and issue a permit to TUF by means of this Agreement for events, and that such use is compatible and appropriate with the uses allowed for City-owned parks; and

WHEREAS, by means of this Agreement, TUF is permitted to conduct the events under this Agreement, so long as such activities are compatible and appropriate as allowed for City-owned properties; and

WHEREAS, TUF as a non-profit entity agrees to perform the obligations in this Agreement in order to conduct the events; and

WHEREAS, the City and TUF believe that the events will generate favorable exposure as well as public benefits for both the City and TUF and serve as a recreational and social occasion for the enjoyment of the entire community; and

WHEREAS, City and TUF will ultimately benefit from the events based on TUF’s and City’s commitment to activate the location in accordance with this and other anticipated Agreements; and

WHEREAS, the City and TUF concur that this Agreement appropriately and fairly establishes the terms and conditions upon which events will occur;

NOW, THEREFORE, the City, for the Term specified below and in consideration of the recitals stated above and the terms and conditions stated in this Agreement, hereby grants to TUF a permit for the right to use the Urban Farm for the events subject to the express terms and conditions as follows:

1. The Events.
 - a. TUF intends to hold a Barn Dance and Open House event on or about July 22, 2017, and a Farm Fest event on or about September 23, 2017 (“Events”). The Open House shall be a free event. TUF may set a price and charge admission for the Barn Dance and Farm Fest.

- b. Except as may be expressly provided in this Agreement, any service or action which is to be performed or taken in connection with the Event shall be the sole responsibility of TUF. Without limiting and in furtherance of the foregoing, TUF shall, or shall cause its contractor to, be responsible, at its sole cost and expense, provide the necessary services generated by, related to or associated with the Events, including:

- . Installation and operation of portable toilets and water supplies necessary for the operation of the Events, including assured public access to and use of the toilets in accordance with the Americans with Disabilities Act (5 foot squared per Denver Public Works requirements), with toilet facilities and cleaned as needed.

- . Clean-up crews, washing equipment, garbage carts, trash receptacles, recycling containers, pick-up of trash and cleaning of debris, and proper removal and disposal of trash and debris, on a daily basis and as needed, including trash and debris put into City-owned trash receptacles in and near the Events Site. "Events Site" shall mean those areas wherein the Events that are the subject of this Agreement will be held.

- . Repair and/or replace, as authorized and directed by the Manager of Parks and Recreation ("Manager"), any damage to real or personal property owned or leased by the City within or in the vicinity of the Events Site and the surrounding park and other property.

- c. The Manager, or Manager's designee, at the Manager's sole option, may perform a pre-Events walkthrough to inspect and document the condition of the Events Site prior to the Events, and/or a post-Events walkthrough to assess damage incurred as a result of the Events. TUF's representative and the Manager, or the Manager's designee, shall mutually arrange times for any walkthroughs. A report of the condition of the Events Site and the surrounding park and adjoining right of way (if any) before and after the Events, including contemporaneous pictures, shall be prepared and signed by both representatives. This report shall provide the basis for determining what clean-up, repairs and/or replacements, if any, are appropriate for TUF to perform or the City to seek reimbursement.

2. Permit.

- a. By this Agreement and subject to the terms and conditions of this Agreement, the City grants a permit to TUF to conduct the Events at the Events Site; to perform all work and take all actions as contemplated to engage in the activities and uses specified in this Agreement. No other permit otherwise issued by the DPR will be required. The permit granted hereby is contingent upon TUF fully and faithfully performing all obligations specified in this Agreement.
- b. TUF shall obtain and comply with, and pay or cause to be paid all fees and costs associated with, any other permits, licenses or approvals required by other City

departments or any other governmental entity with authority over any aspect of the Events or the use of City property.

- c. To the extent that TUF retains or authorizes Subcontractors to perform any of TUF's obligations or to exercise any rights of TUF under this Agreement, TUF shall be solely responsible for assuring that the Subcontractor complies with this Agreement.
 - d. The sale, service and consumption of alcohol beverages of any kind is strictly prohibited at the Urban Farm, except as expressly provided in this Agreement.
3. Sale and Service of Permitted Alcohol at the Urban Farm.
- a. Subject to the terms and conditions of this Agreement, TUF shall have the right to engage in the on-site service, sale, and/or consumption of beer, wine, and hard liquor ("Permitted Alcohol").
 - b. The right of TUF, or its subcontractor, to engage in the service and sale of Permitted Alcohol to the public within the Urban Farm shall be subject to TUF, or its subcontractor, obtaining and complying with all relevant licenses, permits and approvals issued in accordance with applicable law and acting in accordance with this Agreement.
 - c. TUF may enter into a separate agreement with a properly qualified subcontractor to manage and operate service of Permitted Alcohol at the Urban Farm during the Events. A copy of the separate agreement shall be provided to the City. TUF shall be responsible for monitoring the activities of the subcontractor with respect to the service of Permitted Alcohol at the Events and assuring compliance by the subcontractor with applicable law.
4. Compliance with Parks Laws. Except as expressly modified herein or as otherwise modified by written directive of the Manager, the prohibitions and restrictions for uses and activities in a City-owned park set forth in Article I of Chapter 39 of the Denver Revised Municipal Ordinance ("D.R.M.C.") shall be applicable and must be complied with.
5. Contracts. TUF may enter into contracts for the proposed events. The authority delegated under this Agreement shall not be construed to grant TUF the right or power to bind, or to impose any liability upon, the City through any contracts or agreements TUF may make. The City shall have no authority to bind, or to impose liability upon, TUF through any contracts or agreements the City may make, unless the prior, written approval of TUF is obtained.
6. Non-profit Status. TUF shall at all times while this Agreement is in effect take such actions as may be necessary to maintain and preserve its status as a nonprofit corporation that qualifies as a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code (or any successor provision).

7. Term. The term of this Agreement will commence as of execution of this Agreement and expire on December 31, 2017 (the "Term"), unless sooner terminated in accordance with the terms of this Agreement.

8. Termination.

- a. This Agreement may be terminated at any time upon the written mutual agreement of TUF and the Manager (for example, if TUF cancels any of the Events).
- b. This Agreement may be unilaterally terminated, for cause, by either Party upon providing the other Party with written notice; provided that the terminating party is not in uncured breach or default. A termination shall be deemed "for cause" when it is based on a breach or default as which has not been corrected or resolved to the reasonable satisfaction of the non-defaulting Party. If an Event is in progress when such termination occurs, TUF shall be responsible for properly concluding the Event.

. Immediate termination of this Agreement by City shall result, if TUF or any of its officers or directors are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with TUF's business.

9. Default.

- a. Unless otherwise specified in writing by the Manager, or mutually agreed upon by the Parties in writing, if TUF breaches any provision of this Agreement and fails to cure such breach within ten (10) business days after written notice thereof, the City shall be entitled to any and all remedies, legal or equitable, which may be available including, without limitation, specific performance and termination of this License Agreement. All such remedies, including those set forth in this License Agreement, shall be cumulative.
- b. Any cure rights set forth in this Agreement shall not excuse the obligation of TUF to take timely and proper action to prevent, stop, mitigate, or alleviate any recent or impending damage to the Urban Farm, City-owned property or neighboring property or any existing or imminent threat or danger to public health and safety.
- c. If the City breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof, TUF shall only be entitled to seek specific performance or injunctive relief against the City. TUF hereby waives all other rights and remedies, legal or equitable, including damages,

against City. Failure to appropriate shall not constitute a breach of this Agreement.

10. Damages. Both Parties expressly acknowledge that any damages sought for material breach or default of this Agreement are limited to actual damages arising under this Agreement. Both Parties expressly waive and agree not to seek any consequential, incidental, indirect, special and punitive damages arising from breach or default under this Agreement.

11. Non-Waiver. No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

12. Insurance.

- a. TUF agrees to secure, at or before the Effective Date of this Agreement, the insurance set forth in this subparagraph 12 covering all operations, goods or services under this Agreement.
- b. TUF shall keep the required insurance coverage in force at all times during the Term of this Agreement, or any extension thereof, and other period prescribed by law. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies be cancelled or non-renewed before the expiration date thereof. "Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall be sent thirty (30) days prior to such cancellation unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the Director and Risk Management within three (3) business days of such notice by its insurer(s). TUF shall be responsible for the payment of any deductible or self-insured retention under its own policies. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of TUF. TUF shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement or as otherwise required by law.
- c. Proof of Insurance. TUF shall provide a copy of this Agreement to its insurance agent or broker. TUF certifies that the certificate of insurance attached as **Exhibit A**, an ACORD certificate, complies with all insurance requirements of this Agreement. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this subparagraph 15(b) shall not act as a waiver of The Urban Farm's breach of this

Agreement or of any of the City's rights or remedies under this Agreement. Risk Management may require additional proof of insurance, including but not limited to policies and endorsements.

- d. Liquor Legal Liability. TUF shall maintain, or shall cause the Subcontractors who sell or serve Permitted Alcohol to maintain, Liquor Legal Liability coverage with limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit.
- e. Additional Insureds. For Commercial General Liability, Business Auto Liability, and Liquor Legal Liability, the insurer(s) for TUF or the TUF's Subcontractor(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insureds.
- f. TUF shall, or shall require its Subcontractor to, obtain and maintain liquor legal liability insurance for the sale and service of Permitted Alcohol during the Events as provided herein. Said liquor liability insurance must be in effect continuously during the Event Dates and for sixty (60) days thereafter. The liquor legal liability insurance shall not lessen or limit the liability of TUF.
- g. Additional Provisions. For Commercial General Liability, the policy must provide the following:
 - (i) That this Agreement is an Insured Contract under the policy;
 - (ii) Defense costs are outside the limits of liability;
 - (iii) A severability of interests or separation of insureds provision (no insured vs. insured exclusion);
 - (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City; and
 - (v) Any exclusion for sexual abuse, molestation or misconduct has been removed or deleted.
 - (vi) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided, whichever is earlier.
 - (vii) TUF shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At TUF's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, TUF shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.
- h. The provisions of this Section 12 shall survive the expiration or termination of this Agreement.

13. Indemnification.

- a. To the extent permitted by law and not otherwise protected under the City's governmental immunity, TUF hereby agrees to indemnify and hold harmless the City, its directors, officers, agents, and employees from any and all claims, demands, suits, causes of action, liability, judgment for damages, attorney's fees and other costs, or expenses of any kind or nature whatsoever (including Workers' Compensation claims), not arising or occurring by reason of the City's negligence or intentional acts, but rather resulting from or arising out of, directly or indirectly, the intentional or unintentional actions or failure to act by TUF, its officers, directors, employees, agents, and contractors, or due to any activities or work performed by or on behalf of TUF.
- b. Defense. TUF's duty to defend and indemnify the City shall arise at the time written notice of the claims is first provided to the City regardless of whether an action has been filed in court on the claims. TUF's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages. TUF will defend any and all claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such claims including, but not limited to, court costs and attorney fees incurred by the City in defending and investigating such claims or seeking to enforce this indemnity and defense obligation if TUF should fail to defend as required herein. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.
- c. Alcohol. The indemnification and duty to defend provisions shall particularly apply to any claims arising from or associated with the sale, service and consumption of alcohol beverages, whether or not such sales, service or consumption is in compliance with the Permitted Alcohol provisions of this Agreement.
- d. Survival. The provisions of this Section 13 shall survive the expiration or termination of this Agreement.
- e. Relationship to Insurance. The minimum insurance requirements shall not be deemed to limit or define the obligations of TUF, and the indemnification shall not limit or affect the rights of TUF and its directors, officers, employees or volunteers under any policy of insurance (including self-insurance) maintained by the City.

14. Taxes, Permits and Licenses. TUF shall pay promptly all taxes, excise, or license fees of whatever nature applicable to its activities, uses, and sales associated with the Events and take out all municipal, state, or federal permits and licenses required under Applicable Law, and

further shall furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of all taxes and fees above referred to and showing that all required permits and licenses are in effect. Appropriate records shall be maintained and made available in accordance with applicable law. TUF shall be responsible for seeing that any Subcontractor engaged by TUF with respect to the Events shall likewise comply with the provisions of this section.

15. Liens. TUF shall not permit any mechanic's or materialman's liens or any other liens to be imposed upon any City-owned property, or any part thereof, by reason of any work or labor performed or materials furnished by any person or legal entity to or on behalf of TUF, either pursuant to C.R.S. § 38-26-107 or by any other authority. TUF shall promptly pay when due, and shall require its Subcontractors to pay when due, all bills, debts and obligations incurred in connection with this Agreement and the Events and shall not permit the same to become delinquent. TUF shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of the City under this Agreement or to the City's property. TUF shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of the City, that all liens and claims for labor, materials, equipment, or other services or goods have been released and waived or released upon TUF posting an appropriate and sufficient bond or other surety, and that all City-owned property is free of any liens or claims associated with work performed by or on behalf of TUF.

16. Claims. In the event that any claim, demand, suit or other action is made or brought in writing by any person, firm, corporation or other entity against TUF related in any way to this Agreement or the operation of the Park and its Facilities, TUF shall give written notice thereof to the City within five (5) working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour of notification and shall include a copy of any such claim, demand, suit, or other action received by TUF. Such written notice shall be submitted, as provided in this Agreement, to the Manager and the City Attorney, 1437 Bannock Street, Room 353, Denver, Colorado 80202.

17. City Not Liable for Personal Property. The City assumes no responsibility whatsoever for any personal property placed in the Events Site, the surrounding park or other City-owned property, or any load-in or load-out areas, and TUF expressly releases and discharges the City from any and all liabilities for any loss, injury or damages to Personal Property that may be sustained by reason of the occupancy or use of any portion of the Events Site, the surrounding park or other City-owned property, or load-in and load-out areas under this Agreement. All watchmen or other protective service for securing such personal property shall be the sole responsibility of TUF or its Subcontractors. In the receipt, handling, care or custody of personal property shipped or otherwise delivered to the Events Site, the surrounding park or other City-owned property, or any load-in and load-out areas, the City shall act solely for the accommodation of TUF, and not as a bailment, and the City and its elected and appointed officials, agents, or employees shall not be liable for any loss, damage, or injury to such personal property, except that said officials, agents, or employees (but not the City itself) may be personally liable for any deliberate and malicious acts of damage or injury to personal property including theft.

18. Taxes. TUF shall collect and remit all sales taxes and other taxes as required by law (local, state, or federal), shall promptly pay all taxes and excise and license fees of whatever nature applicable to this Agreement, and shall not permit any of said taxes and excise and license fees to become delinquent.

19. Assignment. TUF shall not assign, encumber, or otherwise transfer any rights or interests granted by this Agreement, in whole or in part, without the prior written consent of the City, and unless the assignee or transferee (1) shall agree to assume, and can reasonably demonstrate the ability to perform, the obligations of TUF under this Agreement and (2) shall agree to be bound by the terms, covenants, and conditions contained in this Agreement to be performed or satisfied by TUF with the like force and effect as though such assignee or transferee had been originally named hereunder. No assignment, encumbrance, or transfer of any kind shall be permitted that would extend or be effective beyond the term of this Agreement. Any assignment, encumbrance, or transfer must be approved and executed in the same manner as this Agreement.

20. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the parties that any person or entity other than the parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

21. General Compliance with Laws. TUF shall comply with all Applicable Law in connection with this Agreement. TUF shall use reasonable efforts to ensure that the attendees at the Events and TUF's Subcontractor(s) shall comply with all Applicable Law in and around the Events Site. The City shall not be required to take any action which is inconsistent with Applicable Law. Nothing in this Agreement is intended to supersede, modify, or replace Applicable Law unless such intent is expressly stated in this Agreement.

22. No Discrimination in Employment. In connection with the performance of work under this Agreement, TUF may not refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and TUF further agrees to insert the foregoing provision in all subcontracts hereunder.

23. Colorado Governmental Immunity Act. The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S. and other law. All notice requirements provided by such laws shall be strictly complied with.

24. No Agency or Partnership Relationship. Nothing in this Agreement is intended nor shall be deemed to create an agency, partnership or joint venture between TUF and the City. Nothing in this Agreement is intended nor shall be deemed to grant to TUF any power, right or authority to contractually bind or obligate the City. Nothing in this Agreement is intended nor shall be

Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

28. Electronic Signatures and Electronic Records. TUF consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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SIGNATURE BLOCKS BEGIN ON THE NEXT PAGE.]**

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



