

PREMISES USE AGREEMENT

THIS PREMISES USE AGREEMENT (the "Agreement") is made and entered into on the date fully executed below by and between The Florida International University Board of Trustees, on behalf of Florida International University, ("FIU"), whose business address is 11200 S.W. 8th Street, Miami, Florida 33199, and City of North Miami, a Florida Municipal Corporation ("USER") whose principal business address is 776 N.E. 125 Street, North Miami, FL 33161.

RECITALS

WHEREAS, FIU has control of the following described premises ("Premises"):

Location:

The area to be used for the July 4th Celebration open to the general public event includes the lawn located to the east of the Kovens Conference Center to the water and South of the Marine Biology Building to the Ropes Course. The area South beyond the Ropes Course will be roped off and not accessible to the general public. The fireworks display will be launched from "the Point," the eastern most part of FIU property at Florida International University, Biscayne Bay Campus North Miami, Florida 33181.

WHEREAS, USER wishes to use the Premises for the purpose of conducting the CITY OF NORTH MIAMI JULY 4TH 2015 CELEBRATION; and

WHEREAS, FIU is willing to permit USER to use the Premises for the foregoing reason upon and subject to the following terms and conditions.

NOW THEREFORE, in consideration of the mutual covenants provided herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties do agree as follows:

1. **Recitals.** The above recitations are true and correct and incorporated herein by this reference.

2. **Use of Premises.** USER may use the Premises only for the purpose(s) of setting up and conducting the July 4th Celebration event (the "Program") on the following date(s) during the following time(s):

Date: July 4, 2015 – July 5, 2015

Time: 7:00 a.m. and ending at 2:00 a.m., for the sole purposes of setting up and conducting a fireworks event which shall be open to the General Public from 7:00 p.m. until 11:30 p.m. only.

FIU reserves the right to reassign this reservation to similar facilities if the needs of FIU require such a reassignment.

3. **Compensation.** USER agrees to pay FIU the sum of three thousand one hundred and forty five 50/100 Dollars (\$3,145.50) ("Use Fee"), (**Include, if applicable:** as further described in the cost summary attached hereto and made a part hereof as Exhibit "A" to this Agreement,) for the rights granted under this Agreement, whether the Premises are actually used by USER for the full time granted or not. The USER shall be required to pay the Use Fee on or before June 30, 2015 in the form of a check payable to "Florida International University", which check should be

sent to the attention of: Julissa Castellanos at Office of the Vice Provost, Biscayne Bay Campus, LIB 311, 3000 N.E. 151 St., North Miami, FL 33181. Notwithstanding the foregoing, FIU will calculate final charges upon completion of USER's event/Program. If applicable, FIU will bill the USER for additional charges, if any, for services rendered, if any, in connection with this Agreement. Any additional payment shall be submitted to FIU within forty-five (45) days after USER's receipt of written notification from FIU.

4. General Conditions of Use. USER agrees that USER, its employees, contractors, agents, representatives, invitees, and each of its participants shall comply with each of the following terms and conditions during use of the Premises:

a. USER, its employees, contractors, agents, representatives, invitees and each of its participants are responsible for the proper use and care of any FIU property, including, but not limited to, the Premises. The USER will be liable for the repair and/or replacement cost of any FIU property, including, but not limited to, the Premises, which is damaged, destroyed or lost, resulting from Program related activities.

b. USER shall clean up and restore the Premises immediately after usage to the same condition provided to USER prior to its use of the Premises. Costs will be assessed to USER for clean up and restoration by FIU if USER's clean up/restoration is not satisfactory in FIU's sole and absolute discretion.

c. USER acknowledges that it has inspected the Premises and that it is satisfied that the Premises has the capacity and capability to accommodate the use contemplated under this Agreement. USER accepts the Premises in "AS IS" condition.

d. USER, its employees, contractors, agents, representatives, invitees and each of its participants shall abide by all applicable federal, state, and local laws, rules and regulations, including, but not limited to, environmental laws, and FIU policies, procedures, rules and regulations, including those related to parking, (collectively, the "Laws") in its use of the Premises.

e. USER agrees to perform its promotional and other activities related to its use of the Premises in accordance with all applicable Laws and FIU requirements, and in the least intrusive manner so as not to disturb the atmosphere of the campus and the educational activities therein.

f. To the extent applicable, USER must procure, at its own expense, all permits required in connection with its proposed use, including, but not limited to, permit(s) required by the FIU building officials. USER shall ensure that all of its contractors, agents, or other representatives performing work on FIU's Premises are qualified, licensed, and insured in accordance with applicable Laws and FIU requirements. USER shall ensure that its employees, contractors, agents, representatives, invitees, and each of its participants comply with the terms of this Agreement.

g. USER acknowledges and agrees that FIU shall not be responsible for providing any services, utilities, equipment, or any other items to USER for its use of the Premises, unless otherwise agreed to by the parties in writing.

h. USER shall not make any alterations, additions, and/or improvements to FIU's Premises.

i. USER agrees that there will be no stunt shots, or other dangerous or hazardous activities undertaken in or about the Premises.

5. Security. USER is solely responsible for the security of all property, equipment, materials, and any other items that it or its employees, contractors, agents, representatives, invitees, or guests bring onto the Premises. USER shall also be solely responsible for the security of its employees, contractors, agents, representatives, invitees, and other guests on the Premises. In the event that the USER desires special security services or measures, the provisions of services or measures shall be determined between the USER and the FIU Police Department. The USER is responsible for the costs of such special security. FIU reserves the right, due to the nature or extent of USER's activities, to require the USER to hire off-duty FIU Police Officers to ensure the orderly flow of pedestrians and traffic around the site.

6. Insurance. Check, as applicable:

 Private Entity(s): USER shall provide FIU with proof of insurance sufficient to cover the operations and activities to be carried out on the Premises. Throughout the term of the Agreement, USER shall maintain, at its sole expense, the following minimum insurance coverage: (i) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence, and (ii) workers compensation insurance as required by all applicable workers compensation laws, for its protection and the protection of FIU. The certificate shall indicate that the policy carries an endorsement which names Florida International University, The State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents, and employees as additional insureds. The USER's policy shall be primary and shall be issued in a form acceptable to FIU. Any insurance carried by FIU shall be non-contributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to FIU at least thirty (30) days prior to the effective date of cancellation. USER shall furnish to FIU proof of coverage no less than five (5) days prior to the use date(s).

USER shall immediately notify FIU if the USER's commercial general liability insurance contains any restrictive endorsements other than those restrictive endorsements normally included on standard ISO commercial general liability occurrence or claims made forms. The absence of a demand for any type of insurance certificates or policy shall not be construed as a waiver of the USER's obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with this Agreement, and to ensure that its agents/subcontractors maintain appropriate insurance at all times. USER shall assume all risk and responsibility for the actions of its agents and/or subcontractors on the Premises. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover USER liability.

 X **Public Entity(s):** USER is a self-insured entity with a general and automobile liability risk management program, including the administration of general and automobile liability claims, settlement of claims, a loss control program and trust fund pursuant to Florida law. USER agrees

to maintain in full force and effect and throughout the term of this Agreement, at USER's sole cost and expense, the insurance program pursuant to Florida law. USER shall provide FIU with proof of self-insurance no less than five (5) days prior to the use date(s).

USER agrees to be fully responsible for its acts of negligence, and its employees, contractors, agents and other representatives' acts of negligence, and agrees to be liable for any damages resulting from said negligence to the extent and limits permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any agreement.

To the extent applicable, USER shall ensure that its contractors/subcontractors/agents/representatives maintain, at the contractors/subcontractors/agents/representatives' sole expense, the following minimum insurance coverage: (i) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence; (ii) auto liability insurance covering their owned, non-owned and leased vehicles with a minimum combined single limit of \$1,000,000.00 (each accident); and (iii) workers compensation insurance at the statutory limits and employers liability of \$1,000,000.00, for its protection and the protection of FIU. The general and automobile liability insurance certificate shall indicate that the policy carries an endorsement (no more restrictive than CG 20 10) which names the Florida International University, The State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents and employees as additional insureds. The contractors/subcontractors/agents/representatives' policy shall be primary and shall be issued in a form acceptable to FIU. Any insurance carried by FIU shall be noncontributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to FIU at least thirty (30) days prior to the effective date of cancellation. USER shall assume all risk and responsibility for the actions of its contractors/subcontractors/agents/representatives on the Premises.

7. Indemnification. To the extent provided by law, USER shall release, indemnify, defend, and save harmless Florida International University, The Florida International University Board of Trustees, the Florida Board of Governors, the State of Florida, and their respective trustees, officers, directors, employees and agents from and against all claims, suits, actions, damages, or causes of action during the term of the Agreement, for any personal injury, loss of life or damage to property, including the Premises, sustained by reason or as a result of USER's use of the Premises for which the Agreement is entered into, and from and against any orders, judgments, or decrees which may be entered thereto, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or by reason of the defense for any such claim, suit, or action and the investigation thereof. Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of Florida International University, The Florida International University Board of Trustees, The Florida Board of Governors, and the State of Florida as are provided for by law. This provision shall survive the termination of this Agreement.

8. Independent Contractor. USER is an independent contractor, and neither USER nor USER's employees, contractors, agents, or other representatives shall be considered FIU employees, contractors, agents or representatives.

9. Food Concessions. If applicable, USER shall comply with all applicable laws, including, but not limited to, health and safety laws, pertaining to the service of food. USER shall also be responsible for obtaining any and all required governmental documentation for same, including, but not limited to, licensing and permitting requirements, to the extent applicable.

10. Termination. If USER fails to fulfill any obligation specified in this Agreement, or the intended use or activity to be conducted is not as described in this Agreement, FIU may terminate this Agreement upon written notice to USER. FIU shall have no liability for such cancellation. Additionally, FIU may also terminate this Agreement, at its sole discretion and for any reason whatsoever, upon providing USER with thirty (30) days prior written notice of termination.

11. FIU Logo/Marks. This Agreement does not confer upon USER any rights to use the name, logos, marks and likeness of FIU. USER must obtain FIU's written permission prior to using FIU's name, logos, marks and likeness of FIU.

12. No Joint Venture. USER acknowledges and agrees that FIU's sole role in this matter is to authorize USER to use FIU's Premises for the purposes provided herein. This is not a joint venture between FIU and USER. USER shall be solely responsible for conducting its Program provided for herein and for supervising its employees, contractors, agents, representatives, invitees and participants at all times while on FIU's Premises. As provided herein, USER shall be solely responsible for the safety and security of its employees, contractors, agents, representatives, invitees and participants while conducting its Program on FIU's Premises.

13. Employment or Use of FIU Students in connection with Proposed Use of Premises. USER must obtain FIU's written approval prior to using or employing any FIU student in connection with USER's use of the Premises, if applicable.

14. Miscellaneous.

a. No Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld by the other party in its sole discretion.

b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto.

c. Severability. If any provision or application thereto to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable.

d. Governing Law/Venue. This Agreement is governed by the laws of State of Florida. Exclusive jurisdiction and venue of any actions arising out of this Agreement shall be in Miami-Dade County, Florida.

e. Waiver. The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

f. Survival. Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.

g. Compliance with Applicable Laws. This Agreement is subject to all applicable Laws and the parties agree to comply with all applicable Laws in performing the Agreement terms.

h. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the parties related to the subject matter hereof and supersedes any prior understandings. This Agreement may be amended only by written amendments duly executed by the parties.

i. Counterparts/Facsimile & Electronic Signature. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. To the extent permissible under Florida law, a facsimile/electronic (i.e., sent as a PDF attached to an email) signature shall be deemed to constitute an original signature for the purposes of this Agreement.

j. Force Majeure. FIU does not guarantee the uninterrupted use of facilities (including the Premises), as contemplated under this Agreement, in the event that the use of facilities is suspended or delayed by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident, lack or failure of sources of supply or labor, fuel supply, acts of God or of the public enemy, riots, interferences by civil or military authorities in compliance with the laws of the United States of America or the laws, orders, rules and regulations of any governmental authority, or by reason of any other cause beyond FIU's control, or for emergency inspection, cleaning, repairs, replacements, alterations or renewals which are, in FIU's reasonable judgment, necessary to be made.

The parties execute this Agreement as of the date written below each signature block and each party executing this Agreement warrants and represents that it is authorized by its respective entity to execute a binding Agreement.

[Remainder of Page Intentionally Left Blank]

Witnesses:

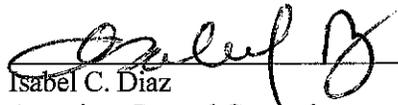
Charmaine Cavé
Lizyette Flores.

**THE FLORIDA INTERNATIONAL
UNIVERSITY BOARD OF TRUSTEES**

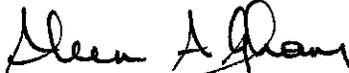

By: Dr. Kenneth A. Jessell
Title: CFO & Senior Vice President

Date: 6-11-15

Approved as to form and legal sufficiency:
FIU Office of the General Counsel


Isabel C. Diaz
Associate General Counsel

CITY OF NORTH MIAMI, "USER",
a Florida Municipal Corporation,

By: 
Aleem A. Ghany, PE
City Manager

Date: 6-25-15

By: 
Michael A. Etienne, Esq.
City Clerk

Date: _____

APPROVED AS TO FORM:


Regine M. Monestime
City Attorney

EXHIBIT "A"**EXPENSES FOR JULY 4, 2015**

Expense	Times		Hours		Cost
(1) Supervisor	6pm - 10pm	hr	4	\$53.00	\$212.00
(1) Officer	6pm - 10pm	hr	4	\$53.00	\$212.00
(1) Officer	6pm - 10pm	hr	4	\$53.00	\$212.00
(1) Officer - Kovens	6pm - 10:30pm	hr	4.5	\$53.00	\$238.50
Facilities: ground crews for initial clean up and maintenance staff for day of event					\$600.00
Fire prevention officer overtime			26	\$35.00	\$910.00
Parking					\$761.00
TOTAL					\$3,145.50