

**RESOLUTION 21-37**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH SEABREEZE JAZZ FESTIVAL FOUNDATION RELATED TO PARK USE FOR THE SEABREEZE JAZZ FESTIVAL FOR THE YEARS 2022 THROUGH 2026.**

**BE IT RESOLVED** by the City of Panama City Beach, Florida that the appropriate officers of the City are authorized to accept and deliver that certain Agreement with Seabreeze Jazz Festival Foundation, relating to Park Use for the Seabreeze Jazz Festival for the years 2022 through 2026, on substantially the terms and conditions set forth in the agreement attached hereto as Exhibit A, with such changes, insertions or omissions as may be approved by the City Manager, whose execution of such agreement shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

**PASSED** in regular session this 12<sup>th</sup> day of November, 2020.

**CITY OF PANAMA CITY BEACH**

By: \_\_\_\_\_

  
Mark Sheldon, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Lynne Fasone, City Clerk

**CITY OF PANAMA CITY BEACH  
PARK USE AGREEMENT**

**THIS AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_ 2020, by and between the City of Panama City Beach, Florida, a municipal corporation (the "City"), 17007 Panama City Beach Parkway, Panama City Beach, Florida 32413, and Event rights holder: Seabreeze Jazz Festival Foundation ("Licensee") whose address is 1306 Bay Drive, Santa Rosa Beach, FL 32459.

**CITY HEREBY GRANTS** to Licensee a license to use that certain real property in Bay County, Florida described as Aaron Bessant Park (the "Site") as more particularly shown on Exhibit A attached hereto and made a part hereof, upon the Terms and conditions of the agreement, which are:

1. **LIMITED USE OF THE SITE.** Licensee shall use the Site for the exclusive purpose of executing a 3 day music festival known as Seabreeze Jazz Festival (the "Event"). The License shall at its own expense obtain any and all governmental licenses and permits necessary for Licensee's use.
2. **TERM.** The Licensee shall be entitled to use the Site to host the Event April 21-24, 2022; April 20-23, 2023; April 25-28, 2024; April 24-27, 2025; and April 23-26, 2026 (the "Term") 7:00 a.m.-11:00 p.m. each day.
  - a. "Set-up". Licensee shall have non-exclusive use of Site for 5 day(s) prior to the commencement of the Event.
  - b. "Event Proper". Licensee shall have exclusive use of the Site during the Event.
  - c. "Take down". Licensee shall have non-exclusive use of Site for 2 day(s) following the conclusion of the Event.
3. **FEE.**
  - a. Licensee agrees to pay City Rent for the Site at the rates in effect at the time of the Event, as such rates are established and amended from time to time by Resolution of the City Council, plus all applicable sales and use taxes imposed upon the rental payment. The Rent shall include the Base Rental for the Site and Services Rented, and any unreserved use of the Site and services incurred by Licensee during the Event Term.
  - b. A \$500 Deposit shall be paid to the City on or by February 1 of each year this agreement is in effect. This deposit shall be credited to the Licensee toward total Rent due, as calculated at the conclusion of the Event. Further this deposit shall be wholly refunded to the Licensee upon notification to the City of the Event's cancellation, no later than 90 days prior to the first day of the reserved Event Term.

- c. Fifty Percent (50%) of the Base Rental for the Site and Services rented shall be paid to the City no later than thirty (30) days prior to the first day of the reserved Event Term.
  - d. Upon the conclusion of the Event, Licensee shall pay City the remaining balance of the Base Rental due for the Site and Services rented, together with all other fees incurred by Licensee's actual use of the Site and municipal services, which shall be due and payable upon notification by the City.
4. **ACCEPTANCE OF SITE.** Licensee represents and warrants that it has inspected or caused to be inspected the Site, including all facilities, utilities and improvements thereon, and that they are acceptable "as is" and appropriate for the Event. In the event of a material change in the condition of the Site adversely affecting the Licensee's ability to produce the Event, Licensee's sole remedy shall be to Terminate this Agreement and receive a refund of the use fee, if paid.
5. **UTILITIES.** Licensor shall pay cost of all utilities consumed during the Term, including but not limited to water, sewer, and electricity. Licensee shall pay all costs of solid waste and hazardous disposal costs for waste generated on or within the Site during the Term.
6. **ALTERATIONS, ADDITIONS, IMPROVEMENTS.**
- a. No permanent alterations, additions, improvements shall be made to the Site without prior approval of the City. The City shall require the Licensee to remove any unapproved alteration, addition or improvement and restore the Site to its original condition at the Licensee's expense.
  - b. Licensee may need to obtain specific permits from the City's building department for certain temporary improvements or structures Licensee finds necessary to produce the Event, including by way of example, portable toilets, temporary electrical cords, junction boxes, water hoses, temporary lighting, temporary fencing, sound equipment, generators, trailers, tents, temporary concession, vendor facilities, trash receptacles and all other improvements of similar nature. Licensee shall remove all such temporary improvements existing on the Site at the conclusion of the Event, failing which the City or its designee may seize, impound, remove, and destroy the same at Licensee's expense.
7. **REPAIRS, MAINTENANCE AND CLEAN-UP.** Licensee shall at its expense keep and maintain in good repair the Site during the Term. Licensee shall provide for the prompt, daily off-Site removal and proper disposal of all human and animal waste generated during the Term. Special care shall be taken to ensure that no run-off or discharge of human or animal waste material occurs to any adjoining land or water body. During Takedown, Licensee shall at its

expense pickup and remove all trash, debris and similar material from the Site and return the same to a neat clean appearance, failing which the City or its designee may pickup and remove all trash, debris and similar material at Licensee's expense. Licensee agrees to timely notify the City of any damage sustained to City property during the Term, and agrees to repair, replace or compensate the City for any damage sustained to City property during the Term, as determined by the City in its sole discretion.

8. **CONDITIONS AND VACATION OF SITE.** Upon completion of the Event each year, Licensee shall return the Site to the condition which existed prior to the Licensee's use of the Site for that year, normal wear and tear of the Event excepted. Licensee shall remove all temporary structures used during the Event including, but not limited to, sanitary facilities, arenas, trailers, tents, concessions, vendor facilities, and all other items associated or used during the Event by any person. All equipment and temporary structures used for the Event must be removed from the Site no later than two (2) calendar days after the Event. If after two (2) days the Licensee has failed to remove all equipment and temporary structures used for the Event then the City may seize, impound and remove all equipment and temporary structures at its own expense and seek reimbursement from the Licensee for all costs associated with such seizure, impounding and removal. Licensee agrees to repair, replace or compensate the City for any damage sustained to City property during the Event. Responsibility for final damage to City grounds, landscaping and park will be determined after the Event.
9. **COMPLIANCE WITH LAWS.** Licensee shall comply and cause its employees, agents and subcontractors to comply with all laws, ordinances and regulations applicable to the occupation use or maintenance of the Site, and shall promptly comply and cause the same to comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in or upon or associated with the Site.
10. **RIGHT OF ENTRANCE.** The City shall have the right to enter the Site at all times during the Term and shall have free access at all times to all spaces occupied by the Licensee, its employees, agents and subcontractors.
11. **INSURANCE AND INDEMNIFICATION.**
  - A. Licensee shall at its expense maintain in force during the Term a comprehensive public liability coverage insuring Licensee against liability arising from Licensee's occupation, use or maintenance of the Site. Licensee's coverage shall be in the amount of \$1,000,000 for property damage and bodily injury to or death of one person in any accident or occurrence and in the amount of not less than \$3,000,000 for property damage and bodily injury to or

death of more than one person in any one accident or occurrence. All such insurance shall name the City, its officers and agents as additional insured's.

- B. City shall at its option and expense maintain in force during the Term such fire, casualty, and extended coverage insurance covering any City owned improvements on the Site as the City may desire.
- C. Licensee shall at its option and expense maintain in force during the Term such Fire, casualty and extended coverage insurance on Licensee's personal property located on the Site, including trade fixtures, equipment, machinery, inventory or other personal property belonging to or in custody of Licensee, and all such policies may waive any right of subrogation against the City.
- D. All coverage maintained by Licensee pursuant to Subparagraph (a) shall be provided by companies registered and licensed to sell insurance in the State of Florida and which may legally provide the coverage set forth herein, and shall be provided by companies reasonably satisfactorily to the City and in form and substance reasonably satisfactorily to the City, and shall provide that coverage will not be subject to cancellation, Termination, revocation or material change except after thirty (30) days notice prior written notice to the City.
- E. Not less than thirty (30) days prior to the Event each year, and thereafter upon the written request of the City, Licensee shall furnish such certificates of coverage and certified copies of policies pursuant to Subparagraph (a).
- F. Licensee shall indemnify and hold harmless and defend the City and its officers, employees, agents and representatives from and against any and all damages, lawsuits, liabilities, claims, costs and expenses including reasonable attorney's fees ("Damages") arising in whole or in part from: (i) the occupation, use or maintenance of the Site by Licensee or anyone claiming by, or through or under Licensee; or (ii) the breach of any Licensee's representations, warranties, covenants or agreements hereunder, including any Damages arising solely from the negligence or willful misconduct of the City. The covenants contained in this paragraph shall survive the Termination of this Agreement.
- G. If any third party claim is made against the City that, if sustained, would give rise to indemnification liability of the Licensee under this Agreement, the City shall promptly cause notice of claim to be delivered to the Licensee and shall afford the Licensee and its counsel, at the Licensee's sole expense, the opportunity to join in defending or compromising the claim. The covenants contained in this paragraph shall survive the Termination of this Agreement.



12. **ATTORNEY'S FEES.** In the Event of any litigation hereunder, each party shall be responsible for its own attorney's fees and court costs at trial and appellate levels and at any Mediation or arbitration.
13. **TIME.** Time is of the essence in the Agreement.
14. **REMEDIES.** Failure to cure a breach of material Term hereunder within four (4) hours of Licensee's receipt of written notice thereof shall entitle the City to terminate this Agreement. All rights and remedies conferred upon the parties in this Agreement shall be cumulative and in addition to those available under the laws of the State of Florida.
15. **ASSIGNMENT.** This Agreement is not assignable.
16. **SEVERABILITY.** In the Event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any provision hereof.
17. **MODIFICATIONS.** No modifications, amendment, or alteration in the Terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City and Licensee.
18. **WAIVER.** Failure by the City to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver by the City of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the Terms of this Agreement.
19. **FORCE MEJEURE.** The City's failure or inability to provide any facility for public use at any time as a result of circumstances beyond its control, such as, but not limited to, war, terrorism, strikes, fires, floods, hurricanes, acts of god, power failures, or damage or destruction of any facility related thereto, shall not be deemed a breach of this agreement.
20. **CITY'S REMEDIES UPON DEFAULT.** If Organizer shall materially breach any of its obligations hereunder, and Organizer shall fail to cure such breach after written notice thereof from City, in the event of monetary breach within ten (10) days of such notice, or in the event of non-monetary breach within thirty (30) days of such notice, then City shall have the option to:
- i. Terminate this Agreement, resume possession of the Site for its own account, and recover immediately from the Organizer the difference between the rent specified in Paragraph 1 above and the fair rental value of the Site for the remainder of the Term, reduced to present worth; or
  - ii. Resume possession and release or rent the Site for the remainder of the Term for the account of the Organizer, and recover from the Lessees, at the end of the Term, or at the time each payment of rent becomes due under this

Agreement as the City may choose, the difference between the rent specified in Paragraph 1 above and the rent received on the releasing or renting.

**21. SPECIAL PROVISIONS:**

- a. **SIGNS.** Organizer shall be permitted at Organizer's expense to place signs or advertisements on or about the Site, but such signs or advertisements shall not display nudity or any offensive language, verbiage or symbols. Organizer shall remove all signs at the completion of the Event at the request of the City.
- b. Organizer shall provide feasible, credible and sufficient plans for the provision of SECURITY and TRAFFIC CONTROL. City acknowledges that the levels in place during use of site for Seabreeze Jazz Festival 2019, were feasible, credible and sufficient for the Event.
- c. Should the actual attendance, the actual number of vehicles or the municipal resources actually required exceed for a period of one (1) hour the number or level anticipated by the Organizer and Special Event permit, it shall become the duty of all persons owning or able to control the event to reduce the excess. The failure of any such person to immediately after notice from the City make a diligent and constant effort to reduce the excess shall be a breach of this contract. The Chief of Police or his designee is authorized to approve actions to partially or slowly reduce the excess as compliance if he or she finds (i) that such person is acting in good faith after notice of the excess, (ii) that full and immediate elimination of the excess will not be feasible and (iii) that it would be safer to taper down the event rather than to abruptly close the venue or stop the event. Conversely, should actual attendance fall below the permit estimates for a sustained period and appear likely to continue at reduced levels, the City Manager or his designee shall be authorized, but not required, to allow the applicant to reduce staffing below the levels set forth in the Organizer's Special Event Permit.
- d. **PERSONAL SERVICE.** Recognizing that the individual talents of Renee Carter and Mark Carter have been critical to the successful implementation of Seabreeze Jazz Festival, the City reserves the right to terminate this agreement upon 30 days notice, if Renee Carter and Mark Carter, jointly, are unable or unwilling to manage this event in materially the same manner as prior events.
- e. The Licensee shall implement and maintain during the Event a digital payment system. Cash transactions shall not be permitted at the Event.

- f. Licensee shall remit to City at the conclusion of the Event, an amount equal to \$2 per Event ticket sold to provide for the operation, maintenance and capital improvement of Aaron Bessant Park.

22. **ALCOHOL.** Alcoholic beverage sale, possession and consumption are hereby approved, subject to the terms and conditions of this Agreement, for the Seabreeze Jazz Festival Event during the Event Proper (3 days) within the Site. Possession, consumption and sale of alcoholic beverages at any other time or any other place, including Set Up and Takedown, are prohibited.

- A. Nothing in this Agreement shall be construed to exempt the Licensee from full compliance with, or amend or modify, applicable City Ordinances or State Statutes.
- B. Licensee shall have full responsibility for the supervision of the sale, possession and consumption of alcoholic beverages within the Site, and shall suspend such sale, possession and consumption whenever necessary to preserve the peace or protect the safety of sponsors, guests or the facility.
- C. Licensee shall at its expense maintain in force during the Term a liquor liability insurance policy in the amount of not less than \$1,000,000 for property damage and bodily injury to or death of one person in any accident or occurrence and in the amount of not less than \$3,000,000 for property damage and bodily injury to or death of more than one person in any one accident or occurrence arising on or about the Site from or associated with the sale, possession or consumption of alcoholic beverage during the Term. Such policy shall name the City, its officers, employees and agents as additional insureds.
- D. Licensee shall at its expense comply or cause compliance with the following policies and procedures regarding alcoholic beverages during the Event Proper:
  - i. A wrist band, stamp, or invitation system shall be strictly enforced by ID check.
  - ii. Licensee shall provide no less than two (2) additional security personnel monitors and be stationary inside the areas designated for consumption of alcoholic beverages.
  - iii. Volunteers/employees assigned to the alcohol consumption area shall be recognized through a badge/name tag identification/ticket/pass.
  - iv. Volunteers/employees shall be trained in the responsible distribution of alcoholic beverages.
  - v. No glass containers shall be used, sold or served in the consumption area.
- E. Prior to commencement of the sale, possession or consumption of alcoholic beverages, Licensee shall provide the City with the following documents:



- i. Evidence of a liquor liability policy;
  - ii. A sketch of the designated area where alcoholic beverages will be permitted;
  - iii. A written plan for toilet facilities, electricity, public safety, security, traffic control, parking, solid waste disposal, responsible consumption of alcoholic beverages, and clean up;
  - iv. A written plan that outlines who will be involved with the distribution of alcoholic beverages and the plan for training those individuals who will be providing or distributing these products;
  - v. Copies of the state alcohol application, state certificate and state special event permit covering the Site where alcohol will be consumed.
- F. Licensee understands and acknowledges that the permission granted is a special exception to the City's policy of prohibiting the possession, consumption and sale of alcoholic beverages in Aaron Bessant Park and that the City Council reserves the right to revoke the special exception at any time, without cause. Moreover, the City, as owner of the Site, reserves the right at all times to immediately suspend the sale, possession and consumption of alcoholic beverages within the Site whenever the City Manager or his designee shall determine, in his or her sole discretion, that such suspension is necessary or prudent to protect the safety of sponsors, guests or the facility. Licensee acknowledges that the City would not have entered this Addendum without reserving all of the above rights.
- G. Licensee represents that it was not requested to obtain this variance by a licensed retailer and that every person or organization which receives any funds from the net proceeds realized from the sale of alcoholic beverages will have been qualified as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954.
23. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no representations, warranties, covenants or other agreements among them.

**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Licensee has executed this Agreement as of the day and year first above written.

Signed in the presence of:

Licensee:

\_\_\_\_\_  
Witness #1 Print Name:

\_\_\_\_\_  
Seabreeze Jazz Festival Foundation

\_\_\_\_\_  
Witness #2 Print Name

\_\_\_\_\_  
By:

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
by

who is personally known to me.

who produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary Public

IN WITNESS WHEREOF, the City has executed this Agreement as of the day and year first above written.

City of Panama City Beach, Florida  
A municipal corporation

\_\_\_\_\_  
Tony O'Rourke, City Manager

Attest:

\_\_\_\_\_  
Lynne Fasone, City Clerk

STATE OF FLORIDA  
COUNTY OF BAY

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020,  
by Tony O'Rourke and Lynne Fasone as City Manager and City Clerk of the City of Panama  
City Beach, Florida

who is personally known to me.

who produced \_\_\_\_\_ as identification

\_\_\_\_\_  
Signature of Notary Public

PREMIUM RESERVE  
PARKING

GOLD  
RESERVE  
PARKING

VOLUNTEER  
PARKING

VENDOR PARKING

HANDICAPED SERVED  
GENERAL ADMISSION  
PARKING

STAFF AND  
PRODUCTION  
PARKING

1 OBSTRUCTION LIGHTING

STAFF

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BLVD COUNTY RD  
COMMAND POST ON  
PERMIT PARK ACCESS  
ROAD  
Additional street signs Per Park Event Sign  
posting

New Park Road  
Access for  
PEDESTRIAN  
ACCESS FROM  
PERMIT PARK

MAIN ENTRANCE  
TENT

CORPORATION  
LIGHTING (ON SITE)

STAFF AND PRODUCTION PARKING

EXIT

EXIT

EXIT

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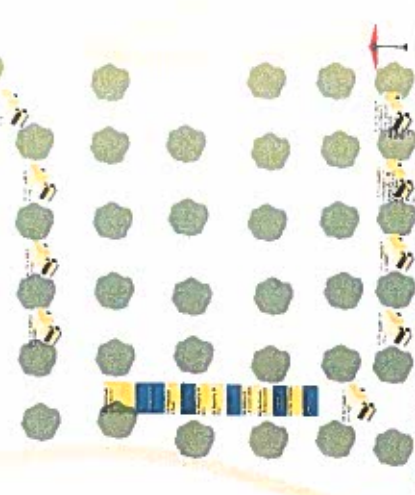
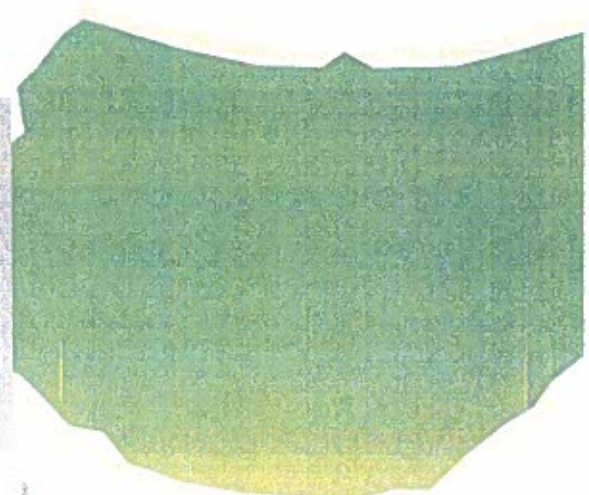
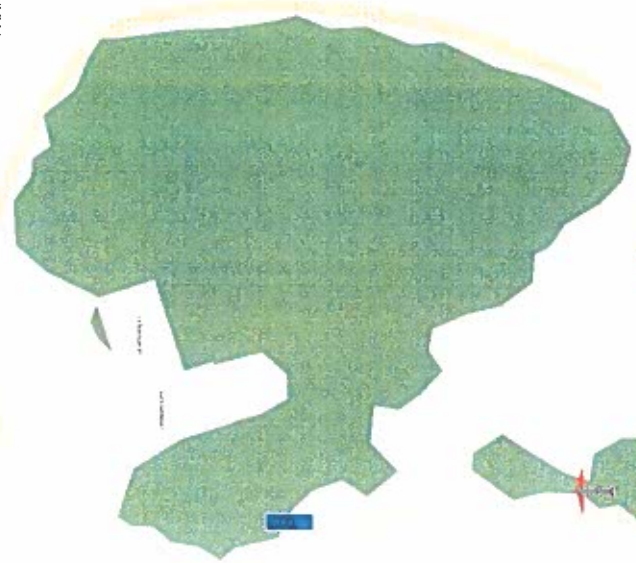
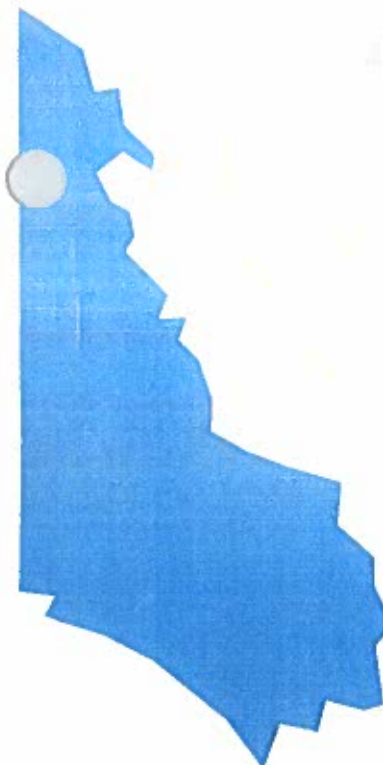
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**Appendix A**

Sponsoring Organization: \_\_\_\_\_ Phone: \_\_\_\_\_  
 WebSite: \_\_\_\_\_

Contract Representative's Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Email Address: \_\_\_\_\_

Name of Event : \_\_\_\_\_ Phone: \_\_\_\_\_  
 Web Address: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 Facilities Requested: \_\_\_\_\_

**1. Schedule of Fees & Costs: Total amount set forth below will be calculated upon conclusion of the Event.**

**Aaron Bessant Park Facilities**

Multi-purpose Sports Field:	(\$100 per field/day)	\$ _____
Amphitheater/Stage/Restroom - Event Days	(\$5,000 per/day)	\$ _____
Amphitheatre/Stage/Restroom - Non-Event Days	(\$500 per/day)	\$ _____
Special Event Restroom	(\$1,000 per/day)	\$ _____
Non-Profit/Tax Exempt Community Activity	(\$500 per/day)	\$ _____

**Frank Brown Park Facilities**

Multi-purpose Sports Field:	(\$100 per field/day)	\$ _____
Festival Site - Event Days	(\$2,500 per/day)	\$ _____
Festival Site - Non-Event Days	(\$500 per/day)	\$ _____
Sports Lighting	(\$20.00/hour)	\$ _____
Non-Profit/Tax Exempt Community Activity	(\$100 per/day)	\$ _____

**Equipment & Maintenance Services:**

Trash Disposal/Dumpster Delivery	(\$350/per pull)	\$ _____
Grounds Sweeper w/Operator:	(\$100 per hour)	\$ _____
32" Scissor's Lift w/Operator	(\$50 per hour)	\$ _____
Sound/Lights Equipment Rental	(\$50 per hour)	\$ _____
6' Rectangular Tables (white)	(\$4.00/day ea.)	\$ _____
Folding Lifetime Chairs (white)	(\$1.00/day ea.)	\$ _____

**SUB-TOTAL:**

+ 6.5% Florida Sales Tax \$ \_\_\_\_\_

**Labor Costs:**

Professional Sound Tech	(\$50.00/hour)	\$ _____
PCBPD Security/FD-EMT	(\$30.00/hour)	\$ _____
Special Event Manager	(\$25.00/hour)	\$ _____
Maintenance/Restroom Attendant	(\$20.00/hour)	\$ _____

**TOTAL:**

\$ \_\_\_\_\_

\*Other: Late fee charge-10% per month on balances 30 days overdue \$ \_\_\_\_\_

**\*\*NOTE\*\***

Execution of this Appendix A does not constitute confirmation of your Event at Aaron Bessant Park. To lock in the date(s) and facilities requested, you must submit a completed and fully executed and notarized Document Package



including the PARK USE AGREEMENT, a Certificate of Insurance, and any applicable vendor and special Event permits to the City of Panama City Beach, Attn: Parks and Recreation Department, Frank Brown Park, 16200 Panama City Beach Parkway, Panama City Beach, FL 32413, Fax: 850.233.5161. Event request forms can be found at [www.playballinparadise.com](http://www.playballinparadise.com). Events will be scheduled upon receipt of the completed Document Package up to one year in advance, but no later than 30 days prior to your Event.