



BURKEBLUE

February 22, 2022

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*** ALSO ADMITTED IN ALABAMA
+ CERTIFIED CIRCUIT COURT MEDIATOR
++ L.L.M. IN TAXATION
+++ CERTIFIED FAMILY MEDIATOR
♦ BOARD CERTIFIED MARITAL &
FAMILY LAW ATTORNEY

SENT BY REGISTERED MAIL

William McMahon
Florida Department of Environmental Protection
Florida Communities Trust
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

RE: Use of Oaks By The Bay Park in Panama City, Florida

Dear Mr. McMahon:

Please find attached for your review a Permit for Recurring Event Use for use of Oaks By The Bay Park, a Conservation Park, in Panama City, Florida, by a not-for-profit entity, the Historic St. Andrews Waterfront Partnership, Inc. (HSAWP), who wish to move their Farmers Market to the Park.

Oaks By The Bay Park was acquired through a conservation grant provided by the Florida Communities Trust (FCT) executed on August 25, 1995. The grant agreement signed by the City requires a 60 day written notice to FCT should the Park be subject to "any activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequence of such activity or interest". See Grant Award Agreement FCT Contract #96-CT-67-93-3A-J1-027, Section IV.1 (hereinafter "Grant").

The St. Andrews Farmers Market has been a popular weekly community event active in the area for many years and organized by the HSAWP, a not-for-profit entity made up of members of the general public. The Market needs to move from its current location in a privately-owned parking lot near the Park and has applied for a Permit to use Oaks By The Bay Park. HSAWP, organizers of the Farmers Market, are requesting use of the Park weekly on Saturdays for a two-year period beginning in May, 2022. HSAWP will not be managing the Park, but only organizing the Farmers Market. There are approximately between 20-30 vendors who participate in the Farmers Market.

In order to protect the Park and comply with the covenants and restrictions imposed on the Park by the Grant Award Agreement, the Permit requires the Organizers of the Farmer's Market that all required licenses and permits will be obtained, there will be no additional buildings, structures, improvements, or permanent signs, no tree removal or major land alterations, no disturbance of archaeological or historic parts of the Park, no permanent concessions, no sales of anything attached to the site (see Grant, Sec. IV), no vehicles on the beach portion of the Park (see Grant, Sec. V.5), nor anything else that would adversely impact the natural resources of the Park or change its character as a conservation Park dedicated to open space, conservation, or outdoor recreation use.

As the Park is a passive, natural resource-based public outdoor recreational site, dedicated to conservation and open to the public, its use as a Farmers Market location will promote these aspects of the Park and should be considered a related use necessary for the accomplishment of this purpose. (see Grant, p. 4, Sec. III.1.). It will encourage pedestrian use of the Park and is compatible with the conservation, protection and enhancement of the Park as a natural and historical resource. (See Grant Sec. V.8).

We hope this provides you with adequate information to evaluate the consequences of this activity on Oaks By The Bay Park. Please feel free to contact me if you have any questions or require additional information. The Grant has also been included for your reference.

Sincerely,



Nevin J. Zimmerman, Esq.
Panama City City Attorney

cc Mark McQueen, City Manager
Michael Johnson
Sean DePalma

PERMIT FOR RECURRING SPECIAL EVENT USE OF

**OAKS BY THE BAY PARK
(A CONSERVATION PARK)**

THIS PERMIT for Recurring Special Event Use (hereinafter "Permit") of Oaks-by-the-Bay Park (hereinafter "Park") is granted on this _____ day of _____, 20____, by the CITY OF PANAMA CITY, a Florida municipal corporation (hereinafter the "City"), to the HISTORIC ST. ANDREWS WATERFRONT PARTNERSHIP, INC., a 501(c)(3) Corporation, (hereinafter "Organizer"), acting by and through:

The CITY OF PANAMA CITY

**and the HISTORIC ST. ANDREWS
WATERFRONT PARTNERSHIP, INC.
a/k/a Farmers Market @ St. Andrews**

Mark McQueen, City Manager
City of Panama City, Florida
501 Harrison Avenue
Panama City, Florida 32401
(850) 872-3199
www.pcgov.org

Contact Name of Organizer
Title of Contact: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email Address: _____

WITNESSETH

WHEREAS, the City recognizes the inherent increased quality of life the community enjoys through use of its Parks; and

WHEREAS, the Organizer is a not-for-profit entity, and member of the general public, and has been hosting a weekly Farmers Market for many years, consisting of fresh vegetable vendors, live music, food and beverage concessions, and artist vendors, as a free event open to the public, thereby creating a cultural and historical heritage activity and bringing awareness to the natural and historical elements of the Park; and

WHEREAS, City owned Parks purchased or acquired through conservation grants funded by the State and/or Federal government require additional review by the granting governmental agency, sub-agency, or political subdivision; and

1. For the purpose of acquiring Oaks by the Bay Park, the City was the recipient of a Grant Award (hereinafter "Grant" and now known as Dedication to Public Use and Declaration of Restrictive Covenants or "DDRC") from the Florida Communities Trust (hereinafter "FCT"), State of Florida Department of Community Affairs, dated August 25, 1995, and said Grant was to assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal element of the City's comprehensive plan; and

2. The obligations imposed by FCT on the City are for the Oaks By The Bay Park to be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of Oaks By The Bay Park, along with other related uses necessary for the accomplishment of this purpose; and
3. It is the obligation of the City pursuant to the Grant to ensure that Oaks By The Bay Park is dedicated to open space, conservation, or outdoor recreation use as appropriate, and for the City to provide evidence to FCT that all activities in the Oaks By The Bay Park comply with all applicable local, state, regional and federal laws and regulations, and ensure that no prohibited activities, construction, vegetation, tree removal, or land alterations that adversely impact the natural resources of the Park take place; and
4. For use of Oaks By The Bay Park, pursuant to the Grant, Section IV, Paragraph 1, the City should provide FCT 60 days written notice should the Oaks By the Bay Park be subject to any activities such as lease of the Park or operation of concessions to a non-governmental organization, and that when the City has received an Application for a Recurring Special Event Permit, incorporated herein by reference, to use the Oaks By the Bay Park by an Organizer for the purpose of holding a Recurring Special Event, the City will have notified FCT in writing of said Application prior to 60 days before the Event; and

WHEREAS, the City recognizes the charitable, cultural, historical, music, educational, and community contributions made by the Organizer, and the Organizer acknowledges the purpose and value of the natural resources of the Park,

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained in this Permit, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties have agreed to the following:

1. Upon approval (when required) by the FCT, the City grants the Organizer the right to use and occupy the Park beginning _____, 20____ and not to extend beyond _____, 20____ to be used for the purpose requested in the Application and for no other purpose without the written consent of the City. Said approval by the City automatically terminates upon the withdrawal of FCT approval (when FCT approval is required).
2. Organizer agrees to protect the Park and leave it in as good or better condition than Organizer found it, including proper removal of trash, debris and litter from the Park grounds accumulated from the Event.
3. The use of the Park granted to the Organizer for the requested purpose stated in the Application may not be amended, changed or assigned without the advance written consent of the City, except Vendors will be allowed and the Organizer agrees to enter into contracts with Vendors that require Vendors to be held to the same obligations as the Organizer in the care of the Park.
4. City grants the sole and exclusive right to Organizer to sell drinks, food, souvenirs, or other legal merchandise. Organizer may lease all concession rights to any party or parties within the event grounds. Organizer must abide by all federal, state and local health requirements and obtain any required permits at the expense of the Organizer. Organizer will ensure that Temporary Food Establishment requirements and regulations are complied with.

5. Trimming of trees may NOT be performed by anyone other than City. Siting of all Vendors should be strategically considered to avoid damaging the natural infrastructure of the grounds.
6. Failure to comply with the terms and requirements of this Permit, and/or produce required documentation in the required manner as stated in all referenced attachments is grounds for immediate revocation of this Permit, but not of the Organizer's obligations to the City under this Permit. Such revocation is effective upon notice of revocation from City to Organizer. No refunds shall be made and any payment made to City shall be taken by City and the full rent called for by the Application and referenced attachments.
7. The City may also terminate this Permit at any time and for any reason, by giving at least thirty (30) days advance written notice to Organizer. Organizer may terminate this Permit for the following reasons, and forfeits the non-refundable event deposit: Organizer may terminate this Permit for any reason with thirty (30) days written notice; provided, however, that all sums paid by the City prior to the termination date provided by Organizer will be returned or reimbursed to the City; or the involuntary dissolution of the Event, or Organization.
8. The City reserves the right upon thirty (30) day notice to the Organizer to cancel any single Saturday event due to a Special Event conflict. The City shall not be responsible for finding, but may assist in finding, an alternative venue.
9. The Organizer is required to provide the City with a Certificate of Insurance for Commercial General Liability insurance with minimum limits of \$1,000,000 each occurrence/\$2,000,000 General Aggregate, and minimum \$1,000,000 Hired and Non-Owned Auto Combined Single Limit insurance, at least ten (10) days prior to the event and maintain said insurance throughout the time period designated in Paragraph 1 of this Permit. Organizer will name the City as an additional insured.
10. If the Organizer, entitled to possession hereunder shall fail for any reason to take possession of or use the premises, without the written consent of City, no refund shall be made and any payment made to City shall be taken by City and the full rent called for by this Permit and referenced attachments, including any disbursements or expenses incurred by the City in connection therewith, shall be payable immediately by the Organizer to the City.
11. If the Park, structures and/or improvements are wholly or partially destroyed or damaged by any cause, casualty, or unforeseen occurrence, or circumstances beyond City's control, rendering City's performance impossible, then this Permit will automatically terminate and Organizer waives and releases any claim for damages or compensation from City on account of termination.
12. City shall Permit Organizer to have and enjoy the use of the Park hereinabove specifically described for the purpose of and for the term aforesaid. However, it shall be the responsibility of Organizer to obtain any permit(s), including alcohol license if permitted by the City Commission, that may be necessary or required by any City, County, State, or Federal ordinance/law for all activities. Said permits shall be obtained at the sole expense of the Organizer and shall be provided to the City.
13. Organizer, at all times, shall control its concessionaires, security, and all of its employees, personnel, volunteers. The City may remove from the premises any and all such employees/volunteers of Organizer engaging in disorderly or unsafe conduct, with its officers and agents, including its policy officers, and may eject any objectionable person or persons from the premises. In the event of the exercise of this authority, Organizer hereby waives any and all claims for damages against the City and its officers and employees on account thereof.
14. Organizer is allowed to sell wine and beer. Organizer must obtain and provide a copy of the License to sell alcohol which license must be within the parameters of the Permit Application. Organizer agrees to indemnify and hold harmless the City from any and all damages, costs and claims arising incident to sale of alcoholic beverages. If alcohol is being sold, Organizer shall provide evidence of coverage for liquor liability in the minimum amount of \$1,000,000.

15. Should Organizer fail to fulfill any requirements of this Permit and referenced attachments concerning necessary personnel or services, the City may in its discretion, hire the necessary personnel or services, and bill the Organizer for the cost, plus a fee for administrative expense and Organizer agrees to pay City for those costs and fees upon demand.
16. City, through its Quality of Life, Parks and Recreation Department, Police, Fire, Safety, other designated representatives, shall have the right at any time to enter any portion of the PARK or permitted areas for any purpose, and the permitted area at all times will be under the sole charge and control of the Parks and Recreation Department Director/Quality of Life Director or his designated representatives. Access to the premises shall be controlled by the City during the period by this Permit, the entrances and exits of the premises shall be open or closed under the direction of Organizer in accordance with the terms of this agreement and the normal constraints for public safety as determined by the Parks and Recreation Department Director or designated representatives.
17. City shall have the sole right to collect, remove from grounds, and have custody or articles and personal property left on the premises by Organizer or persons attending the Event. Organizer releases and discharges City from any and all liabilities for any loss, injury or damages to property abandoned or not.
18. Organizer shall comply with all laws of the United States, and of the State of Florida, all ordinances of the City of Panama City, and all rules and requirements of the Police and Fire Departments, or other Municipal Authorities of the City of Panama City. Upon violation of law by Organizer, or any person employed by or admitted to the Park by Organizer, upon notice Organizer will immediately take action to correct any such violations.
19. All Ordinances and Resolutions of the City of Panama City relating to the rental and use of the Park are incorporated by reference for all purposes.
20. Organizer will in any contract or agreement with Vendors to require Vendors to pay all applicable taxes, local, county, state or federal, in connection with the Event and Event performances, exhibitions or entertainment, and that Vendors will furnish City all necessary information in order that the City may report the transactions to the Federal Government. Organizer will in any contract or agreement with Vendors hold Vendors responsible for the collection and reporting of all taxes due any governmental entity for the sale of other taxable items and will indemnify and hold harmless the City from and against any and all claims arising out of the collection and/or reporting of taxable sales occurring in connection with the Event.
21. Organizer will in any contract or agreement with Vendors require Vendors assume all liabilities and costs arising from the use of patented, trademarked, or copyrighted materials, equipment, devices, processes or dramatic rights used on or incorporated in the conduct of said Event; and Organizer in any contract or agreement with Vendors will require that Vendors indemnify and hold harmless City from all damages, costs and expenses in law or equity for or on account of all claims arising out of the use of any patented, trademarked or copyrighted materials, equipment, devices, processes or dramatic rights furnished or used by Organizer, and all claims arising incident this Permit.
22. Roads, except when there is a permit for a road closure, pathways, sidewalks, entrances and points of ingress and egress will be kept unobstructed by Organizer, and shall not be used for any other purposes than public ingress or egress. Grounds sidewalks and walkways may not be obstructed. The wide concrete promenade at Oaks By The Bay Park may be used as Vendor sites when pre-arranged by Organizer.
23. If road closings are required for this Event, Organizer must provide an approved permit for a street closure, and closure map.
24. Organizer will not bring or permit anyone to bring or keep anything in the Park or permitted area that will or may increase the fire hazard or adversely affect the Park or permitted area. Organizer will not bring any personal property onto the Park or permitted area or place or put up any decorations that may damage the Park or permitted area without the consent of the City.

- City reserves the right at any time to require Organizer to remove from the PARK or permitted area any animals, furniture, fixtures, wiring, exhibits, or other thing in its sole discretion.
25. Organizer must provide event litter control which actively collects and controls grounds litter. Organizer may NOT pick up trash solely after the event. Litter control is not limited solely to Park property. It is expected that Organizer also pick up litter from affected areas, pathways, bridges, trails and similar areas. Multi-day Events are required to clean all parks and surrounding areas of litter and debris daily.
 26. Organizer will provide clean up after the Event including all Event sites, designated parking areas and the immediately adjacent impacted neighborhoods streets. Post event clean up should include a walk/sweep of the grounds to remove items typical of large special events such as zip ties, wire clippings, nuts/bolts, can tabs, disposable paper and plastic products, etc.
 27. Organizer will not cause or permit any nails or other things to be driven into any structures or trees nor any sign to be affixed without permission, nor cause or permit any changes, alterations, repairs, painting or staining or any part of the structure or equipment thereof, nor permit to be done anything which will damage or change the finish or appearance of the structures thereof. In addition, continuing an Event in the presence of rain without consulting the City places the Organizer at risk of defacing property, incurring additional fees/charges/damages, and all City required repair labor and/or costs.
 28. Organizer will review and uphold posted adopted Park rules as established under the City.
 29. Should any clause, paragraph, sentence or section of this Permit be determined to be void, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of the Permit shall not be rendered void and unenforceable as a result but rather shall remain in full force and effect.
 30. In the event City requires the services of an attorney to pursue any of the remedies available under this Permit against the Organizer, including the filing of a lawsuit and Organizer is determined by a court of competent jurisdiction to be in default hereunder, the Organizer shall pay all costs and expenses, including but not limited to, reasonable attorney's fees, incurred by the City in the enforcement
 31. To the fullest extent permitted by law, Organizer hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, licensees, and invitees (collectively called "Indemnities") against any and all liability, damage, loss, claims, suits, demands, judgments, expenses, and actions of any nature whatsoever, on account of personal injury (including, without limitation, Workers' Compensation and death claims), or property loss or damage of any kind whatsoever, including but not limited to attorney's fees, which arises, in whole or in part, or is claimed to arise out of or is claimed to be in any manner connected with the use of the Park for the Event.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have executed this as of the date first written above.

CITY OF PANAMA CITY, FLORIDA

By: _____
MARK MCQUEEN, City Manager
of the City of Panama City

**HISTORIC ST. ANDREWS
WATERFRONT PARTNERSHIP, INC.**
a/k/a Farmers Market @ St. Andrews

By: _____
LISA BARNES-TAPSCOTT
Executive Director

**CITY OF PANAMA CITY
COMMUNITY REDEVELOPMENT AGENCY**

By: _____
MICHAEL JOHNSON, Director

**HISTORIC ST. ANDREWS
WATERFRONT PARTNERSHIP, INC.**
a/k/a Farmers Market @ St. Andrews

By: _____
JANIS BOATRUGHT, President

PARKS AND RECREATION DEPARTMENT

By: _____
Sean DePalma
Quality of Life Director

APPROVED AS TO FORM

By: _____
Nevin J. Zimmerman
City Attorney
Burke Blue, P.A.

Referenced attachments made a part of this Permit:

- Event Permit Application
- Indemnity and Hold Harmless Agreement
- Certificate of Liability Insurance
- Temporary Permit for Sale of Alcoholic Beverages License
- Business/Organization Extra Duty Request
- Grant Award Agreement FCT Contract #96-CT-67-93-3A-J1-027 (aka DDRC)
- Warranty Deed, Bay County, Florida, ORB 1585 Pages 1-3