AGENDA ADDENDUM
REGULAR CITY COUNCIL
CITY OF LEANDER, TEXAS

Pat Bryson Municipal Hall
201 North Brushy Street ~ Leander, Texas

Thursday ~ May 4, 2017 at 7:00 PM

Mayor – Christopher Fielder	**Place 4 – Ron Abruzzese (Mayor Pro Tem)**
Place 1 – Andrea Navarrette	**Place 5 – Jeff Seiler**
Place 2 – Michelle Stephenson	**Place 6 – Troy Hill**
Place 3 – Shanan Shepherd	**City Manager – Kent Cagle**

CONSENT AGENDA

A1C. Approval of the Liberty Fest Site Use Permit Agreement by and between the City of Leander and Austin Community College for the purpose to use the property located at 640 Mel Mathis Avenue for Liberty Fest 2017; in an amount not to exceed Ten Dollars ($10.00); and authorize the City Manager to execute any and all necessary documents.

NOTE: The above items will be considered under its respective category on the Leander, Texas City Council Agenda for Thursday, May 4, 2017.

CERTIFICATION

This meeting will be conducted pursuant to the Texas Government Code Section 551.001 et seq. At any time during the meeting the Council reserves the right to adjourn into Executive Session on any of the above posted agenda items in accordance with the Sections 551.071 [litigation and certain Consultation with attorney], 551.072 [acquisition of interest in real property], 551.073 [prospective gift to city], 551.074 [certain personnel deliberations] or 551.076 [deployment/implementation of security personnel or devices]. The City of Leander is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please call the City Secretary at (512) 528-2743 for information. Hearing impaired or speech disabled persons equipped with telecommunication devices for the deaf may call (512) 528-2800. I certify that the above agenda for this meeting of the City Council of the City of Leander, Texas, was posted on the bulletin board at City Hall in Leander, Texas on the 1st day of May 2017 by 5:00 pm pursuant to Chapter 551 of the Texas Government Code.

Dara Crabtree

Dara Crabtree, City Secretary, TRMC

AGENDA ITEM #A1C

EXECUTIVE SUMMARY

05/04/2017

COUNCIL AGENDA SUBJECT: ***Approval of the Liberty Fest Site Use Permit Agreement by and between the City of Leander and Austin Community College for the purpose to use the property located at 640 Mel Mathis Avenue for Liberty Fest 2017; in an amount not to exceed Ten Dollars ($10.00); and authorize the City Manager to execute any and all necessary documents.***

BACKGROUND: Attached for Council consideration is a *Site Use Permit Agreement* for this year's Liberty Fest. The Festival will again be on the Austin Community College property east of Capital Metro's Leander Station.

Liberty Fest is scheduled for Tuesday, July 4th

FINANCIAL CONSIDERATION: Ten Dollars ($10.00)

RECOMMENDATION: Staff respectfully recommends Council approval of the Liberty Fest Site Use Permit Agreement and authorization for the City Manager to execute the agreement on behalf of the City.

ATTACHMENT:

1. Site Use Permit Agreement

PREPARED BY: Mark Tummons, Parks & Recreation Director

USE PERMIT AGREEMENT

STATE OF TEXAS §
WILLIAMSON COUNTY §

THIS PROPERTY USE AGREEMENT (the "Agreement") is entered into on this ___ day of _____ 2017 by Austin Community College (the "Owner") and the City of Leander, a Texas home rule municipality (the "City"). Hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

Whereas, the City wishes to use the property identified in Exhibit A that is hereby attached and made part of this Agreement and located in the outlined area noted as the "Festival Site" of the Site Map, Leander, Texas, (herein the "Property") for Liberty Fest 2017 ("Liberty Fest") and Owner has agreed to such usage on the terms provided herein,

NOW, THEREFORE, for and in consideration of the above recitals and the terms, conditions and agreements stated in this Agreement and for and in consideration of Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. **Permitted Use.** Owner agrees to allow the City to use the Property for Liberty Fest activities and parking on July 4, 2017. In the event that Liberty Fest is cancelled by the City due to inclement weather, the City will have the right to use the Property on July 5, 2017, for parking only, for persons attending the fireworks display on property owned by Capital Metro. The City shall also have the right to enter the Property during the Term in order to prepare the Property for the City's intended use and for take down after the City's use.

Section 2. **Property Maintenance.** Owner hereby authorizes the City to use the Property, to the extent agreed by the Parties, for the term of this Agreement, for the purposes of hosting Liberty Fest. The City shall not suffer, allow or permit the Property to be damaged. The City shall clean the Property before and after each use to remove any litter, filth or other offensive material and to return the Property to the state such Property was in prior to use by the City. The City shall mow the Property, as needed before Liberty Fest.

Section 3. **Duration or Termination of Agreement**. This Agreement shall become effective on May 4, 2017 and shall continue in force until July 14, 2017 (the "Term"). This Agreement may be terminated: (a) for cause in the event that either Party materially breaches the terms of this Agreement and fails to cure after notice and thirty (30) days to cure; (b) on thirty (30) days advance written notice by either party to the other party; or (c) the City cancels the event. The right to terminate is in addition to all other rights and remedies available to either Party at law or equity, provided , however, that the Parties waive any right to consequential or punitive damages.

Section 4. **Rights and Duties of the City.** The City, its employees, officers, agents, contractors, and invitees, shall be permitted to utilize the Property for the Term of this agreement for the purpose of Liberty Fest. The City shall:

(a) Have a right to ingress and egress from the Property and use of the Property under the terms of this Agreement subject to the reasonable rules and regulations established by the Owner.

(b) Not discriminate against any person based on race, religion, creed, national origin, sex, disability or any other legally protected classification.

(c) Not convey, assign or otherwise subcontract this Agreement to any other person or entity without the express, written agreement of the Owner.

(d) Not permit, suffer or allow any activities of the City to interfere with any other facilities or activities on the Property.

(e) Maintain risk pool insurance in the amount of $3,000,000 for each occurrence, to cover any incidents, injuries or occurrence related to the City's use of the Property, and provide the Owner with copies of certificates of insurance demonstrating compliance with this subsection prior to the date of the event. Such insurance coverage shall name Owner. The City waives all rights against Owner for damages caused by any peril to the extent covered by insurance provided under the insurance requirements of this Agreement City will require each vendor to maintain commercially reasonable insurance, including automobile liability and general liability insurance with appropriate coverage for the vendor's activities, naming the City and Owner as additional insureds, and with waiver of subrogation endorsements in favor of the City and ACC, to the extent available.

(f) Pay the fees associated with this use permit timely as provided in Section 6.

(g) Not permit any construction or alteration of any buildings or facilities which has not been expressly approved by the Owner.

(h) Provide portable restroom facilities and hand washing stations for the duration of Liberty Fest, which facilities shall be removed prior to the end of the Term.

(i) Allow not-for-profit and for-profit vendors to sell food, beverage and other complimentary goods for the purpose of providing attendees with goods and services consistent with the purpose of the event.

(j) Provide temporary electrical service and water service.

(k) Provide security and traffic control as needed, during Liberty Fest.

(l) Provide fire and EMS personnel during Liberty Fest.

(m) Provide all labor, equipment and materials to set-up, hold, breakdown and clean-up Liberty Fest. The breakdown and clean-up of Liberty Fest shall begin immediately after the end of the event and shall be completed no later than July 14, 2017.

(n) Provide Owner recognition as a Grand Finale Sponsor on brochures, flyers and banners.

(o) Provide, at its sole cost and expense, such safety devices, monitoring, supervision, lighting, personnel, and other services, resources, facilities or amenities as may be reasonably necessary to render the Property suitable for the City's intended use and to conduct the event(s) in a reasonably safe, orderly and well-run manner, and to provide take down and clean-up in a timely manner.

Section 5. **Owner's Rights and Duties.** The Owner agrees that for the sole consideration expressed herein, the City shall have use of the Property as described. The Owner shall not charge any additional rental or admission fees to the City except as provided in Section 6. The Owner shall:

(a) Not suffer, permit or allow the Property to be utilized in a manner inconsistent with the intended use as a location for sponsoring the event during the period from July 4th to July 5th, 2017.

(b) Provide at least thirty (30) days written notice to the City should the Owner need to use the Property on a date the City is scheduled to use the Property.

Section 6. **Fees and Costs of Usage.** The City shall pay the Owner a fee of Ten Dollars ($10.00) for use the Property pursuant to this Agreement (the "Use Fee") within five (5) days of execution of this Agreement.

Section 7. **Notices**. Any notice required to be given under this Agreement shall be in writing. Any notice given shall be deemed to have been given when hand delivered, as indicated by the date of delivery from the records of the courier service or, if mailed, as of seventy-two (72) hours from the time when notice was deposited in the United States mails (certified or registered, return receipt requested, postage prepaid), addressed to the Party to be served as indicated herein, whether or not actually received. Notice given in any other manner will be deemed given when and if actually received. Either Party may change its address for purposes of notice by giving notice of such change of address to the other Party.

To Owner At:
Austin Community College
9101 Tuscany Way
Austin, TX 78754
Attn: William Mullane
Phone: 512 223-1024
Email: wmullane@austincc.edu

To City At:
City of Leander
P.O. Box 319
Leander, TX 78646
Attn: City Manager
Phone: 512-528-2940
Email: kcagle@leandertx.gov

Section 8. **Amendments and Changes.** No alteration, addition or amendment to the terms of this Agreement shall be made except by a formal written amendment hereto executed by both parties. Any and all agreements heretofore made, if any, between the parties regarding the subject matter of this Agreement have been reduced to writing and are contained herein. This Agreement states the sole and exclusive terms of the agreement between the parties regarding the subject matter of this Agreement, and any and all prior agreements, regarding such subject matter, not set forth herein are null and void.

Section 9. **Indemnity.** To the extent permitted by applicable law, the City agrees to indemnify and hold harmless Owner and its officers, directors, agents, employees and representatives from and against all liability for any and all claims, suits, demands, and/or actions arising from or based upon intentional or negligent acts or omissions on the part of the City which may arise out of or result from City's occupancy or use of the Property and/or activities conducted in connection with or incidental to this Agreement. This provision shall survive termination or completion of this Agreement.

Section 10. **Texas Law Governs**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Williamson County, Texas. Venue shall lie exclusively in Williamson County, Texas.

Section 11. **Prohibition of Exclusive Right**. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right.

Section 12. **Severability.** In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. However, if City's obligation to pay the fee set forth in Section 6 or any other payment due to be paid by the City pursuant to this Agreement is determined to be invalid or unenforceable, this Agreement shall terminate.

Section 13. **Survival.** Any provisions of this Agreement that state that they survive termination or completion, or which are performable or which may be performed after termination or completion, shall survive termination or completion.

IN WITNESS WHEREOF, the parties have executed this Agreement by their officers thereunto duly authorized and such Agreement is effective as of the first date indicated above.

OWNER: Austin Community College

By: _____
Dr. Richard M. Rhodes, CEO/President

CITY: City of Leander, Texas

By: _____
Kent Cagle, City Manager
P.O. Box 319
Leander, TX 78646

Attest:

By: _____
Dara Crabtree, City Secretary

2017 Liberty Fest Site
Exhibit A
Feet
0 250 500
W SAN GABRIEL PKWY
E SAN GABRIEL PKWY
ST GALDS LOOP
MEL MATHIS AVE
US 183
W METRO DR
METRO DR
LONGHORN CAVERN RD
HERO WAY
OLD 2241 WEST
Liberty
Fest Site