

IN THE CIRCUIT COURT OF VAN BUREN COUNTY, ARKANSAS
_____ DIVISION

WILLIAM RODERICK CORLEY and
OZARK MOONSHINE & MUSIC FESTIVAL, INC. PLAINTIFFS

VS. Case No.: 71CV-24-_____

CITY OF FAIRFIELD BAY, ARKANSAS and,
MAYOR JACKIE SIKES, in her official capacity DEFENDANTS

COMPLAINT

Come now the Plaintiffs, William Roderick Corley and Ozark Moonshine & Music Festival, Inc., by and through their attorney, Kent Tester, and for their Complaint state:

Jurisdiction and Venue

1. Separate Plaintiff William Roderick Corley (hereinafter referred to as "Rod Corley") is a resident of Cleburne County, Arkansas. Ozark Moonshine & Music Festival, Inc. (hereinafter referred to as the "Festival") is a non-profit corporation formed for the purpose of promoting the heritage, music and cultural history of the Ozarks, with its principal place of business at 125 Village Place, Suite B, Fairfield Bay, Van Buren County, Arkansas.

2. Prior to the formal organization of the Festival, Separate Plaintiff Rod Corley made a grant/donation to the City of Fairfield Bay, Arkansas, to promote an annual event called the Ozark Moonshine & Music Festival, in addition to the promotion of various arts and entertainment within the City of

Fairfield Bay. One result of the donation by Corley was the "Winter Concert Series" held at the City's Conference Center during winter 2022-2023.

3. To facilitate the donation for a particular and designated use, Corley and the City of Fairfield Bay, Arkansas, entered into a series of Memoranda of Understandings that allocated the donated funds for promotion of the City of Fairfield Bay as it relates to the annual festival, arts, entertainment and the "Winter Concert Series".

4. This lawsuit is brought for an accounting of the donated funds, a declaratory judgment and for injunctive relief against the City of Fairfield Bay and Mayor Jackie Sikes. The City of Fairfield Bay is a subdivision of the State of Arkansas primarily located within Van Buren County, Arkansas.

5. Accordingly, jurisdiction and venue are properly in this Court.

Statement of Facts

6. All averments contained in paragraphs 1-5 are incorporated herein.

7. To facilitate and govern the donations of Rod Corley to the City of Fairfield Bay, Arkansas, the parties entered into a "Memorandum of Understanding" that set out the terms and usage of the initial donation for promotion of various arts and entertainment within the City of Fairfield Bay, Arkansas. Attached hereto and marked "Exhibit A" is the Memorandum of Understanding dated March 29, 2022 reciting that its effective date is March 29, 2022.

8. The initial Ozark Moonshine & Music Festival was held the first weekend of November 2022, partially utilizing the funds donated by Corley. The funds expended were spent in accordance with the initial Memorandum of Understanding, a portion of which was for inventory of logo embossed promotional materials such as T-shirts, stickers, decals, ballcaps, magnets, and camping chairs. Per the 2022 MOU, the promotional items were the property of the City of Fairfield Bay, Arkansas, and the left-over items were stored in a room located in the City owned Conference Center.

9. Mayor Jackie Sikes was elected during the 2022 election cycle and upon taking the oath of office was installed as Mayor on January 1, 2023.

10. Shortly after taking office, Mayor Sikes focused her attentions on the City's Conference Center, which had been recently taken over by the city after a collaboration agreement with the Cobblestone Inn to manage the Conference Center ended in or around January 1, 2022. Newly installed Mayor Sikes directed that the Festival personnel promptly remove the inventory from the Conference Center, which they did at the expense of time and money to the Festival and Rod Corley.

11. Since the Festival had commenced the organization, promotion and preparations for the 2023 Festival, the inventory of promotional items turned over to the Festival by Mayor Sikes was used as 2023 promotional material; meaning that the items were given and distributed to businesses, distilleries, and persons the Festival called upon to do business with the City and the Festival at the 2023 event.

12. At no time did Mayor Sikes or anyone from the City communicate to the Festival that the use and distribution of the inventory was restricted or that the city claimed ownership thereto until in or around June 2023 when negotiations commenced for the rental of the Conference Center for the 2023 Festival. At this point, Mayor Sikes began to demand that the city be reimbursed by the Festival for the inventory. She insisted that no agreement could be made regarding the Conference Center until the city was reimbursed for the inventory.

13. The City of Fairfield Bay did not itemize or have a record of the promotional items in its possession, nor did it demand one until long after -- much of the items were already distributed toward the 2023 Festival.

14. In or around May 2023, by agreement with the Festival and the City of Fairfield Bay, the parties entered negotiations wherein statements and communications were made that were supposed to be protected as confidential, pursuant to Rule 408 of the Arkansas Rules of Evidence. During the discussion that followed, representatives of the Festival made good faith efforts to discuss the needs, plans and designs of carrying out the Festival to comply with city, county and state regulations. Central to the discussions were the carry over funds from the money donated by Rod Corley to support the 2022 and 2023 events, which included both Festivals and the Winter Concert Series. Mayor Sikes was focused on the inventory turned over to the Festival.

15. During the negotiations, the City made demands for payments for top tier corporate rates for use of the Conference Center to be charged against

the carry over donations made by Corley. Impossible demands were made by the Mayor and Conference Center personnel, along with the continual raising questions about the promotional items the Mayor had previously demanded the Festival remove from the Conference Center. Another example of ridiculous demands made by the Mayor was the proposed charges for the use of kiosks, originally constructed and paid for by the Festival founder Rod Corley through donations to the City. The City did not use the kiosks for any other purposes and they remained idle and left to weather in the elements behind the Conference Center.

16. During the negotiations the parties committed to respond and provide information by certain dates, which the City did not comply with, causing delays and hinderances to finalizing plans that were dependent on the City's position on issues like the use of the Conference Center.

17. Because the Mayor and City personnel were so untimely in their response to the request of the Festival for quotes, the Festival was forced to rent other spaces for matters such as the "Command Center", which is an essential need to provide safety and public services such as ambulance/EMT to Festival attendees.

18. During the course of planning and setting up the original 2022 Festival, a master Festival Map, for purposes of public safety, was carefully designed and published for the organization and public safety of the Festival. The plan is copyrighted and owned by the Festival. The Festival has never

granted permission for the City to use or distribute the map to any third-parties.

19. The Festival representatives made diligent efforts to respond and accommodate the City's demands, even after having to take alternative measures such as relocating the command center, yet the City continually responded unreasonably late and continually made unreasonable demands for prices.

20. After the initial year of operation as a city event sponsored by Rod Corley and the Ozark Moonshine & Music Festival filed and became a non-profit entity, which was approved as a 501(c)(3) organization.

21. Negotiations were painfully slowed by the City's foot dragging with coming forward with necessary information. The Festival's Board of Directors had to make numerous contingency plans to work around the City's intentional creation of problems employed for the purpose of frustrating the preparations for the rapidly approaching festival. The City finally leveraged the Festival with time constraints to complete planning for the upcoming event to the point that the Festival had to consent to allow the City to take \$6,000 to apply toward legal expenses and to accept the compromised terms for applying the City held funds that were originally donated by Rod Corley. The original donations were for the sole purpose of promoting arts and entertainment in the City of Fairfield Bay and not to pay legal expenses or otherwise fund the City's normal operations.

22. All communications between the City's attorney, Mayor and the City Councils' representatives and the Festival's representatives were confidential pursuant to Rule 408, however Mayor Sikes, during open City Council meetings, repeated statements made during the negotiations, in violation of the confidentiality agreement.

23. Most recently, on July 16, 2024, Mayor Jackie Sikes made statements during a video she created and published on social media wherein she made false, misleading and defamatory statements about the Festival and Rod Corley, to wit: the Festival was giving away inventory belonging to the City "without permission" and "he (Corley) did break the MOU in several places...". Said statements are false and misleading because the Mayor directed Festival personnel to immediately remove the inventory from the City's conference center without an accounting, restrictions or any directions to account for it later. The statements are also misleading because the Festival did not use, nor even desire to use, the Conference Center and all other issues like catering services etc. were merged into the 2023 MOU approved by the City of Fairfield Bay City Council on or about September 5, 2023. Any complaints Mayor Sikes and the City Council had about the Festival were made as confidential communications during negotiations of the 2023 MOU. Accordingly, the Mayor's video statements breach the confidentiality agreement with the Festival.

25. The animus toward Rod Corley held by Mayor Jackie Sikes runs deep, as evidenced by the fact that in or around December 2022 Mayor-elect

Sikes reported Corley to the U.S. Federal Bureau of Investigation for allegedly threatening her as a public official. Said report was determined to be unfounded and all authorities, including Federal, State and Local prosecutors declined to investigate further or charge Corley with any wrongdoing.

Count I: Declaratory Judgment

26. All averments and allegations set out in paragraphs 1-25 are incorporated herein.

27. The Plaintiffs are entitled to a Declaratory Judgment setting out that the statements made by Mayor Jackie Sikes are a breach of the confidentiality agreement, together with a finding that the City of Fairfield Bay and Mayor Jackie Sikes have waived all confidentiality of the statements made during the MOU negotiations for the 2023 Festival.

28. The Plaintiffs are entitled to a Declaratory Judgment setting out that any terms of the 2022 MOU that were modified and merged into the 2023 MOU was approved by the City Council of Fairfield Bay on or about September 5, 2023. Attached hereto as "Exhibit B" is the Council's resolution and MOU for 2023 Festival.

29. The Plaintiffs are entitled to a Declaratory Judgment setting out that statements made by Mayor Jackie Sikes, Roger Hooper and any other members of the City's representatives may be published by the Plaintiffs to defend against recent public statements made by Mayor Jackie Sikes.

Count II: Injunction

30. All averments and allegations set out in paragraphs 1-29 are incorporated herein.

31. The Plaintiffs are entitled to an injunction that orders Mayor Jackie Sikes and any other officials with the City of Fairfield Bay from publishing matters, statements, communications, letters and emails made in furtherance of the negotiations for the 2023 Festival.

32. Prior statements made by Mayor Jackie Sikes have been false and misleading, with actual malice to inflict economic damage to the Plaintiffs and if she and others for the City of Fairfield Bay continue to publish false and misleading statements irreparable harm will result. Accordingly, the Plaintiffs are entitled to a permanent injunction to halt the Defendants and their agents from disclosing purported statements that are protected by the confidentiality agreements of negotiations to stop further irreparable harm from occurring.

Count III: Defamation

33. All averments and allegations set out in paragraphs 1-32 are incorporated herein.

34. Mayor Jackie Sikes made false and misleading statements on another video she made and published in or around July 16, 2024, regarding recent emails sent to the Festival's and the Winter Concert Series customers that were inadvertently sent from an automated point of sale system. The Mayor's statements suggested that confidential private information had been disseminated to third-parties or that the records had been hacked; however,

Mayor Jackie Sikes conducted no investigation or inquiry of the Festival to determine if there was any basis for said statements. In fact, there was no breach of confidential information, no hacking, and no personal information was shared with anyone outside the Square Point of Sale System.

35. The false and misleading statements made by Mayor Sikes is the proximate cause of damages suffered by the Plaintiff.

36. The false and misleading statements were published with actual malice or with such careless disregard for the consequences of the falsity that malice may be inferred.

37. Accordingly, the Plaintiffs are entitled to actual damages, punitive damages, in addition to attorney's fees and costs of this action.

Count IV: Breach of Confidentiality Agreement

38. All averments and allegations set out in paragraphs 1-37 are incorporated herein.

39. The Plaintiffs entered into negotiations for the 2023 MOU in good faith and with the expressed agreement that all communications made in furtherance of the negotiations were confidential and would not be published without all parties' consent.

40. Mayor Jackie Sikes breached the confidentiality agreement initially at a City Council meeting for the City of Fairfield Bay held in or around September 2023 by reciting statements that she and her representatives made during those negotiations. She also filmed and published a video which she

posted on social media wherein she also disclosed settlement communications. She removed the video upon request of the Plaintiffs.

41. Notwithstanding having to take down the above-described video in September 2023, Mayor Jackie Sikes made and published two more videos wherein she discussed communications and matters about the Festival that are protected by the confidentiality agreement.

42. In addition to all the relief requested above, the Plaintiff is entitled to attorney's fees and costs for breaching the confidentiality agreement.

WHEREFORE, the Plaintiffs pray that this Court enter a Declaratory Judgment that the Confidentiality Agreement was breached by Mayor Jackie Sikes; that the City has waived any protection from confidentiality agreements made during negotiations with the Plaintiffs; that this Court issue an injunction to halt any City Officials from making statements about protected communications with the Plaintiff; for compensatory damages and punitive damages; along with attorney fees and costs.

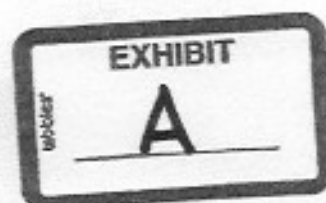
Respectfully submitted,

By: /s/ Kent Tester
KENT TESTER, AR Bar No. 89123
Attorney for Plaintiff
Tester Law Firm, P.A.
230 Hwy. 65 North, Suite 7
Clinton, AR 72031
(501)745-7077 FAX:(501) 745-6161
kent@testerlaw.com

MEMORANDUM OF UNDERSTANDING
Effective Date – March 29, 2022

This Memorandum of Understanding is by and between City of Fairfield Bay, hereinafter referred to as "City," and Rod Corley, hereinafter referred to as "Donor." City and Donor are collectively referred to herein as the "Parties," and individually as "Party." For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties agree as follows:

1. This Memorandum of Understanding ("Agreement") is made on the last dated signature, below, with an effective date of March 29, 2022.
2. This Agreement is meant to assist Donor in fulfilling his commitment to City for the funding of a Special Event (November Concert and event tentatively titled "Ozark Moonshine and Music Festival"), as set forth on the May 9, 2022, Resolution No. 2022-06 of the City of Fairfield Bay, adopting a Special Event Budget.
3. Donor agrees, understands, and consents to City relying upon this Memorandum of Understanding as the basis for putting on the Special Event, and using donated funds from Donor as the legal basis for incurring expenses in order to put on the Special Event.
4. Donor agrees to donate the estimated costs and expenses of the Special Event, up to a maximum of \$244,510.00 (including previous donation and budgeted expenses) in order to assure the City of the resources needed to put on the Special Event. Donor agrees to indemnify and hold harmless the City for these outlays, actually sent, and estimated going forward, for putting on the Special Event.
5. In accordance with his agreement to donate funds, Donor agrees to make donations in a timely manner to assure the City of an "evergreen" account, in the amount of \$75,000.00, in the account previously set up by the City, for the Special Event. City shall make all "Special Event" expenses out of this account (other than the initial \$20,015.00).
6. "Evergreen" means that City may make expenses as needed, in accordance with the Special Event budget, without prior approval from Donor, and donor agrees to reimburse the City for those expenses to maintain the Special Event account at a minimum \$75,000.00 balance.



7. City is prohibited from paying expenses from the account if and when the balance of the Special Event account declines to \$25,000.00, on a temporary basis, pending receipt of additional funds from Donor.
8. City anticipates revenue from the Special Event, over time, and agrees to deposit revenue for the Special Event into this Special Event account. City shall treat all Special Event income as non-refundable deposits, and may use those funds as a source of payment for budgeted costs and expenses of the Special Event.
9. Donor understands and agrees that the balance of funds in this account shall accrue to City, and shall not be refunded to him, at the conclusion of the event. The balance of funds in the Special Event account shall be treated as donations to the City of Fairfield Bay, irrespective of the source of those funds (from Donor, from other potential sponsors, from attendees, and from such other sources of funds as may be anticipated in an event like the Special Event).
10. City agrees to keep revenue from the Special Event separate and apart from City General Funds. Excess revenue and donations from the Special Event shall be used for bringing future arts and entertainment to the City. Revenues and donations in excess of expenses are subject to expenditures by the City, for arts and entertainment, in accordance with authorization from City Council, and with input from the Donor as to his requests for expenditures of such excess Special Event revenue funds, as art and entertainment.
11. Expenses for the Special Event shall be directly billed to City.
12. Donor irrevocably guarantees payment of all invoices and other debts incurred for Special Event, made in the name of City, pursuant to this Memorandum of Understanding.
13. Parties agree that expenditures for items purchased in the name of City must meet the requirements of Arkansas law to be qualified as expenses used for the Special Event; records of all purchases and payments are subject to state and local audit, and must be maintained as records of the City of Fairfield Bay, Arkansas, for at least five (5) calendar years from the date of the invoice.
14. Purchases, invoices, and proof of payment are subject to inspection by the Donor, and must meet all requirements of Arkansas law, rules, and regulations, including fiscal laws for Cities of the Second Class, and further including appropriation requirements, if any; City reserves all rights to seek reimbursement, repayment, setoff, and any

other rights at law and equity in the event Donor fails to keep the account "evergreen" for the Special Event.

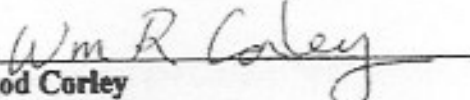
15. Parties agree that the Special Event account shall be subject to inspection by Donor at any time during regular business hours, on reasonable notice to the City.
16. Parties agree that Recorder-Treasurer for City, and the Mayor, are entitled to demand donations in order to make payment of any invoice at any time, and should receive the appropriate donation as soon as possible upon reasonable notice to Donor.
17. This Memorandum of Understanding is effective for 2022, and ends on December 31, 2022.
18. Parties understand and agree that the total amount of debt incurred to City, and the total of invoices billed to City, for Special Event, shall not exceed two hundred forty-four thousand, five hundred ten dollars (\$244,510.00) and further that this Memorandum prohibits incurring unpaid debt in excess of the twenty-five thousand dollars (\$25,000.00) Special Event account minimum balance, unless and until ratified and approved by the city council for City, in a formal Resolution.
19. This Memorandum is not transferrable to any other entity.
20. City agrees to make any and all records of expenditures available to the Legislative Auditor, or such other entity as may audit the books and records of City, from time to time, up to five (5) calendar years after December 31, 2022.
21. Entire Agreement: All prior negotiations of Parties relating to the subject of matter hereof have merged in, and are superseded by, this Memorandum of Understanding, which contains the entire agreement of Parties. No Party may vary the terms of this Memorandum of Understanding without the written agreement of the other Party.
22. Drafting: Parties agree that this Memorandum of Understanding has been mutually drafted by Parties, and that each separate Party has had ample opportunity to obtain legal review of this document prior to execution.
23. Venue and Jurisdiction: Venue for any enforcement action shall be in Van Buren County, Arkansas, exclusive of any other jurisdiction. Circuit Court in Van Buren County, Arkansas shall have subject matter and personal jurisdiction over Parties, exclusive of any other jurisdiction. Attorney's fees, costs, and expenses, shall not be awarded to either Party as part of the damages in the event of any enforcement action being filed.

24. Parties understand and agree that this Memorandum, and any orders, invoices, payments, and correspondence concerning this Memorandum of Understanding are subject to Arkansas Freedom of Information Act requirements.
25. The persons signing below shall be the administrators of this Memorandum of Understanding.
26. Parties understand and agree that this Memorandum of Understanding is subject to submission and approval of the City Council for the City of Fairfield Bay, as a Resolution, based upon the estimated expenses in excess of the Mayor's authorization to make expenditures.

IN WITNESS WHEREOF, the parties hereto set their hands and seal this 14th day of June, 2022, *nunc pro tunc* to March 29, 2022, the date of the City's first receipt of funds from Donor for this Special Event.

Donor Signature

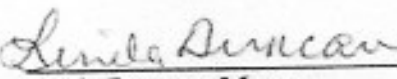
Printed Name


Rod Corley
Donor

Rod Corley

**City of Fairfield Bay
Signature**

Printed Name


Linda Duncan, Mayor
City of Fairfield Bay

Linda Duncan, Mayor
City of Fairfield Bay, Arkansas



ACKNOWLEDGMENT

STATE OF ARKANSAS)
Van Buren County) ss.

On this 10th day of June, 2022, before me appeared Rod Corley, also known as "DONOR" in this Memorandum of Understanding, who proved to me through government issued photo identification to be the above-named person, in my presence executed the foregoing instrument and acknowledged that he executed the same as his free act and deed, in accordance with his intent as a Donor to the City of Fairfield Bay Special Event account.

[Notary Seal below]



Karen Tangen
Notary Public

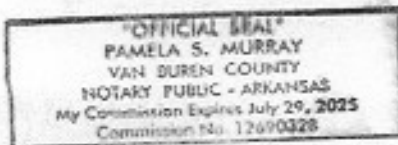
My commission expires: 10/20/2030

ACKNOWLEDGMENT

STATE OF ARKANSAS)
Van Buren County,) ss.

On this 14th day of June, 2022, before me appeared Linda Duncan, Mayor of the City of Fairfield Bay, well-known or who proved to me through government issued photo identification to be the above-named person, in my presence executed the foregoing instrument and acknowledged that she executed the same as her free act and deed, in accordance with her authority as Mayor of the City of Fairfield Bay, Arkansas.

[Notary Seal below]



Pamela S Murray
Notary Public
My commission expires: 7-29-2025

RESOLUTION NO. 2023-_____

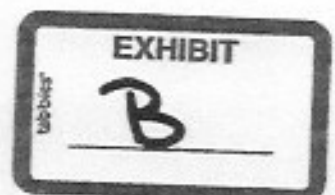
**A RESOLUTION OF THE
CITY OF FAIRFIELD BAY, ARKANSAS,
APPROVING
MEMORANDUM OF UNDERSTANDING
WITH
OZARK MOONSHINE & MUSIC FESTIVAL, INC.,
A NON-PROFIT ENTITY,
FOR THE PURPOSE OF SPECIFYING
USE AND SOURCE OF FUNDS FOR
PUTTING ON A FESTIVAL
IN THE CITY OF FAIRFIELD BAY ON
THE FIRST WEEKEND IN NOVEMBER, 2023;
AND FOR OTHER PURPOSES**

WHEREAS, the City of Fairfield Bay in November 2022 put on an "Ozark Moonshine & Music Festival" in the City, with substantial support from a donor; and

WHEREAS, the City Council approved a Resolution on April 10, 2023, setting forth the outline of terms and conditions for a private entity to put on an Ozark Moonshine and Music Festival in 2023 and subsequent years, in the City of Fairfield Bay; and

WHEREAS, the City and the newly-formed non-profit entity, "Ozark Moonshine & Music Festival, Inc." (OMMF) seek to specify, for the 2023 Festival, the source and uses of funds, and other matters, for the 2023 Festival itself, which is now fewer than sixty (60) days from starting; and

WHEREAS, the City Council, the Mayor, and representatives from OMMF carefully reviewed the proposed Memorandum of Understanding (#2); and



WHEREAS, the City Council seeks to authorize the Mayor to agree with OMMF, in a form substantially similar to the draft Memorandum of Understanding attached hereto;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF FAIRFIELD BAY, ARKANSAS, that:

1. The City Council approves a Memorandum of Understanding with Ozark Moonshine & Music Festival, Inc., to specify certain funding matters, and other details, for the November in 2023, Festival, in accordance with the terms substantially similar to those attached hereto as the Memorandum of Understanding (MOU #2).
2. This Resolution shall become effective immediately upon publication by posting by the Recorder-Treasurer, and shall likewise be published in a local newspaper of general circulation in the City of Fairfield Bay.
3. The Mayor and the Recorder-Treasurer be, and they are hereby, authorized to take any and all actions necessary to execute the Memorandum of Understanding, and to proceed with efforts necessary for the City to host the privately-run "Ozark Moonshine & Music Festival" in November of 2023, according to the terms of the Memorandum of Understanding, with adjustments that may be made by legal or other necessity, and as set forth therein.

IT IS SO CONSIDERED AND RESOLVED by the City Council for the City of Fairfield Bay on this 5th day of September, 2023.

Honorable Jackie Sikes
Mayor, City of Fairfield Bay, Arkansas

Attest:

Rose O. Owen, Recorder-Treasurer

Prepared by:
AJ Kelly
Kelly Law Firm, PLC
Rev2: 9/5/23

MEMORANDUM OF UNDERSTANDING #2
"Ozark Moonshine & Music Festival" 2023 Event
Effective Date – September 5, 2023

This Memorandum of Understanding is by and between City of Fairfield Bay, hereinafter referred to as "City," and Ozark Moonshine & Music Festival, Inc., an Arkansas non-profit, hereinafter referred to as "OMMF." City and OMMF are collectively referred to herein as the "Parties," and individually as "Party." For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties agree as follows:

1. This Memorandum of Understanding #2 ("Agreement") is made on the last dated signature, below, with an effective date of September 5, 2023 (assuming City Council approval at a Special City Council meeting).
2. This Agreement is meant to memorialize City's agreement with OMMF finalizing details for the City to be the venue for OMMF's privately-staged annual festival, called the "Ozark Moonshine & Music Festival" ("Festival") in the City of Fairfield Bay, Van Buren County, Arkansas.
3. As previously agreed, Festival dates are the first Friday in November and the immediately next following Saturday, November 3 and 4. Pursuant to its second application for, and payment of, the "Temporary Entertainment District" fee of \$25.00, previously deposited into the City of Fairfield Bay bank accounts, OMMF shall have exclusive right to use the entire "Temporary Entertainment District" footprint, including all parking facilities within the control of the City of Fairfield Bay, for purposes of setup, tear down, and cleanup, from 9 a.m. on November 1 to the beginning of the event on November 3 and from the end of the event on November 4 until 12 noon on November 5th. As previously agreed, Music, outdoor events, serving of alcohol and ordinary customer access to the temporary entertainment district shall be limited to the two Festival dates (Friday and Saturday). Further, all Parties agree that all attendees at a City Conference ending on November 1, 2023, who stay at the Cobblestone Inn & Suites (Hotel), shall continue to have access to the parking lot used by City and Hotel, until 3:00 p.m. on November 1, 2023; special accommodation or other necessary instructions to those attendees shall be coordinated through the Incident Command Director, so that those persons will be provided a means of exiting the parking lot by 3:00 p.m. on November 1, in a manner acceptable to OMMF and City.

4. OMMF represents that it has coordinated use of the parking facilities with the Incident Command Director (described below), the Hotel (currently Cobblestone Inn & Suites), Fairfield Bay Community Club, a/k/a Fairfield Bay Resort and Communities, with all other businesses that are within the temporary entertainment district, and all businesses and residents adjacent to the temporary entertainment district, **bounded by Highway 16 E, W. Cliff Drive, Richwood Drive and Woodlawn Drive ("bounded area")**. To the extent not previously agreed, OMMF shall designate six (6) parking places at the Fairfield Bay Conference Center for use of staff at the Fairfield Bay Conference Center without charge; the location of these six parking spaces shall be facing Lost Creek Parkway, where staff usually parks. All other parking at the Fairfield Bay Conference Center, including handicapped parking spaces, the remaining parking spaces facing Lost Creek Parkway, and all other spaces on either side of the Conference Center shall be designated for use by OMMF, as it shall designate on the Parking Plan. Ingress and egress to all parking at the Fairfield Bay Conference Center shall be as designated by OMMF (and approved by the Incident Command Director) in its Parking Plan for the duration of the Festival, starting at 9 a.m. on November 1 and ending at 12 noon on November 5, 2023.

5. TRANSPORTATION: OMMF and City agree that transportation is normally a Festival expense. The 2023 Festival Parking Plan is more restrictive than the 2022 Moonshine Festival, and prohibits all parking on Dave Creek Parkway. In addition, OMMF represents that the initial estimates for costs, fuel, labor, and vehicle size for TRANSPORTATION were all underestimated in 2022, resulting in a loss to the contracting entity, notwithstanding the superior performance of the contractor in 2022. Consequently, OMMF has obtained estimates from the same provider (Pinnacle Charter & Tours) to provide enhanced transportation services for the 2023 Festival at an estimated rate of \$25,393.00. Providing transportation to visitors, volunteers, paid staff, and others is a vital public purpose which enhances the safety of the City, its Citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall enter into an agreement with Pinnacle Charter & Tours as the "single source" available for the Festival at this late date; and assuming City Council approval, City shall budget and pay the estimated \$25,393.00 estimate (not to exceed \$26,000.00). All Parties agree that City does not have sufficient time to seek requests for proposals, or requests for bids, for this purpose, given the time constraints. OMMF represents that it has obtained the concurrence of Mr. Rod Corley, and that both OMMF and Corley concur that the City may appropriate funds, previously unappropriated (or appropriated as an expense of the City's own Moonshine Festival prior to creation of OMMF), from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to

meet this obligation. City's INCIDENT COMMAND DIRECTOR shall be the City's primary source of communication with, and about, Pinnacle Charter & Tours.

6. **SITE CLEANUP:** OMMF and City agree that site clean-up is normally a Festival expense. Providing a clean environment, free of trash, refuse, debris, and other materials, is a vital public purpose which enhances the safety, welfare, peace, and dignity of the City, its citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall enter into an agreement with Elite Floor Services as the "single source" available for the Festival at this late date; and assuming City Council approval, City shall budget and pay the estimated \$4,456.65 estimate (not to exceed \$5,000.00). All Parties agree that City does not have sufficient time to seek requests for proposals, or requests for bids, for this purpose, given the time constraints. OMMF represents that it has obtained the concurrence of Mr. Rod Corley, and that both OMMF and Corley concur that the City may appropriate funds, previously unappropriated, from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to meet this obligation. City's COORDINATOR shall be City's primary source of communication with, and about, Elite Floor Services.

7. **PRIVATE SECURITY:** OMMF and City agree that PRIVATE SECURITY is normally a Festival expense. Providing a safe environment, however, is a vital public purpose which enhances the safety, welfare, peace, and dignity of the City, its citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall enter into an agreement with Safe Haven Security as the "single source" available for the private security for the Festival at this late date; and assuming City Council approval, City shall budget and pay an estimated \$9,000.00, with the stipulation that all such Private Security shall be provided as directed by the Incident Command Director, or the Assistant Incident Command Director; Safe Haven Security shall report to, and be responsible to, the Incident Command Director and his Assistant. All Parties agree that City does not have sufficient time to seek requests for proposals, or requests for bids, for this purpose, given the time constraints. OMMF represents that it has obtained the concurrence of Mr. Rod Corley, and that both OMMF and Corley concur that the City may appropriate funds, previously unappropriated, from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to meet this obligation.

8. **INCIDENT COMMAND DIRECTOR:** For the 2023 Festival, the Incident Command Director shall be Doni Hovick; his Assistant shall be Doug Forsman.

OMMF and City agree that payment of the Incident Command Director is normally a Festival expense. Providing a safe environment, with satisfactory "Incident Command" however, is a vital public purpose which enhances the safety, welfare, peace, and dignity of the City, its citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall budget and pay the \$1,000.00 fee for the Incident Command Director, and the Assistant Incident Command Director, with \$500.00 going to each person, as a stipend. OMMF represents that it has obtained the concurrence of Mr. Rod Corley, and that both OMMF and Corley concur that the City may appropriate funds, previously unappropriated, from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to meet this obligation. To the extent not otherwise specified herein, the Assistant Incident Command Director may fulfill any duties of the Incident Command Director, as required by this Memorandum of Understanding, or the April 10 Memorandum of Understanding; in the event of any conflict or misunderstanding concerning these duties, Doni Hovick shall resolve the conflict or misunderstanding.

9. SUPPLEMENTAL POLICE PROTECTION: OMMF and City agree that payment for Supplemental Police Protection is normally a Festival expense. Providing a safe environment, with satisfactory certified law enforcement personnel, however, is a vital public purpose which enhances the safety, welfare, peace, and dignity of the City, its citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall budget and pay the \$7,000.00 "overtime" stipends for certified law enforcement personnel. OMMF represents that it has obtained the approval of Mr. Rod Corley, and that both OMMF and Corley agree that the City may appropriate funds, previously unappropriated, from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to meet this obligation.
10. STAGING: City and OMMF agree that OMMF shall be responsible for payment of its staging contractor. OMMF agrees to provide the City of Fairfield Bay promotional consideration on its staging, by using language such as "The City of Fairfield Bay Welcomes You" or "Welcome to the City of Fairfield Bay" or "Visit the City of Fairfield Bay" and the like, on all staging. Advertising and promoting the City of Fairfield Bay, is a vital public purpose which enhances the welfare, peace, and dignity of the City, its citizens, residents, visitors, employees, volunteers, occupants, and others. Consequently, with City Council approval, on a one-time basis to induce OMMF to have the 2023 Festival in the City of Fairfield Bay, City shall budget and pay the \$6,000.00 to OMMF for the promotional considerations on all staging for the

2023 Festival. OMMF represents that it has obtained the concurrence of Mr. Rod Corley, and that both OMMF and Corley concur that the City may appropriate funds, previously unappropriated, from the City's "Special Event Account," using proceeds from the 2022 Moonshine Festival, to meet this obligation. OMMF shall invoice City after the 2023 Festival concludes, and shall provide pictures and copies of all promotional consideration, to the Recorder-Treasurer, with the invoice, at the conclusion of Festival. Payment from the City is due no later than fifteen (15) calendar days after receipt of the invoice from Festival. Festival shall consult with the City of Fairfield Bay Advertising and Promotion Commission, and its Secretary (the City's Recorder-Treasurer), concerning sufficient language to use promoting the City of Fairfield Bay as a destination for use of the Conference Center, and other City amenities, facilities, parks, trails, attractions, and events.

11. AUDIO: City and OMMF agree that OMMF is, and shall be, responsible for payment of audio contractors for the Festival.
12. GENERATORS: City and OMMF agree that OMMF is, and shall be, responsible for payment of all generators, and electrical contractors who operate generators providing additional power to the 2023 Festival.
13. KIOSKS: City in 2022 obtained (or had constructed) 5 "Kiosks" for use at various festivals and events; those Kiosks were first used, and explicitly designed for, use at the 2022 Moonshine Festival. Since the end of the 2022 Moonshine Festival, the City has not had any other conference or event request use of the Kiosks, other than the Christmas event of 2022; further, the City has "stored" the Kiosks outdoors, exposed to the weather, taking up valuable parking spaces outside the Conference Center. All Parties stipulate and agree that the Kiosks are currently not suitable for use, and that they have become a burden to the City, as they are in need of repair and updating, and that the cost of such repairs exceeds the City's ability to pay for the repairs, given the paucity of the use of such Kiosks for anything other than the Moonshine Festival. Further, each Kiosk can only be moved with a Forklift, i.e., something the City does not have, and something that the City would have to rent in order to move the Kiosks. City agrees to submit a Resolution to the City Council for disposition of the Kiosks as assets without further useful life, and to dispose of Kiosks, for \$1.00 per Kiosk, to OMMF, "where is, as is," without the City making any repairs or updates; OMMF further agrees to remove the Kiosks, and to store them (or dispose of them) at another venue, at OMMF's expense, no later than 12 noon, on November 5, 2023, i.e., the Sunday after the conclusion of the 2023 Festival, upon passage of an appropriate Resolution by the City Council, disposing of the assets.

14. MERCHANDISE FROM 2022: OMMF and City agree that there was a significant amount of merchandise (promotional items) left over from the 2022 Moonshine Festival ("2022 Merchandise"). While City approved a budget for its own 2023 Moonshine Festival in December 2022, City nonetheless asked its employees to have other persons (who were not employees of the City) "remove all merchandise" from the Fairfield Bay Conference Center in January of 2023. OMMF represents that it (or its predecessor in interest) obtained storage facilities for the merchandise in the amount of \$875, off-site (not at the Conference Center); OMMF agrees to submit the appropriate invoice for this rental to City.

During the period of time from December 27, 2022, to, until on or about April 10, 2023, City anticipated putting on its own 2023 Moonshine Festival; on execution of a Memorandum of Understanding with OMMF (MOU #1), on or about April 10, 2023, City and OMMF agreed that OMMF, a private, non-profit entity, would put on the 2023 Moonshine Festival. From December 27, 2022, until April 10, 2023, the 2022 Merchandise was distributed to various vendors, volunteers, contacts, potential volunteers, potential vendors, and others, as promotional materials for the City's own 2023 Moonshine Festival; there is no specific accounting for the 2022 Merchandise so distributed.

The organizers of the 2022 Moonshine Festival have provided a "spreadsheet" of the 2022 Merchandise, which shows categories of merchandise, and the cost of such merchandise, at the conclusion of 2022, and when last able to verify the inventory levels remaining in 2023.

Further, from April 10, 2023, the 2022 Merchandise was distributed to various vendors, volunteers, contacts, potential volunteers, potential vendors, and others as promotional materials for the OMMF 2023 Moonshine Festival, since it appeared to have no other useful purpose for the City; there is no specific accounting for the 2022 Merchandise so distributed, other than the spreadsheet, above. City and OMMF agree that distribution of the 2022 Merchandise was mistakenly distributed without specific authorization from City, in a good faith attempt to promote the City's 2023 Moonshine Festival (which is no longer going to take place), and in a good faith attempt at using the 2022 Merchandise for the only purpose apparently available: promotion of the 2023 Festival. All Parties stipulate and agree that the City, itself, would have no useful purpose for remaining 2022 Merchandise, *other than* as promotional material in connection with a "Moonshine Festival" in the City of Fairfield Bay.

For 2022 Merchandise distributed before April 10, 2023, City and OMMF agree that there was a valid public purpose for such distribution; to the extent that there was not

sufficient public purpose, OMMF agrees, on its own behalf, and on behalf of its predecessors in interest, to offset its \$875 storage fee for 2022 Merchandise, distributed, accordingly, thereby relieving the City from payment of off-site storage for City's 2022 Merchandise.

In partial consideration of 2022 Merchandise distributed any time after April 10, 2023, OMMF agrees that all remaining "camp chairs" shall have an additional "stencil" or tag with language advertising and promoting the City of Fairfield Bay; OMMF shall have exclusive right to use such "stenciled" camp chairs as it may wish for the 2023 Festival, including by sale, gift, or other use; OMMF agrees to account to the City Recorder-Treasurer, accordingly, for those camp chairs (number left at time of inventory on spreadsheet, and disposition by number of "camp chairs" distributed with City of Fairfield Bay promotional stencil or tag).

In additional consideration of 2022 Merchandise distributed any time after April 10, 2023, OMMF agrees that all other remaining 2022 Merchandise shall be distributed to potential 2023 Festival volunteers (including all types of volunteers discussed in the April 10, 2023, Memorandum of Understanding), to encourage them to volunteer, for their use and enjoyment as potential volunteers during the 2023 Festival; distributions to potential volunteers shall be in packaging that conveys that it is complements from the City of Fairfield Bay as an encouragement for the volunteers to continue their public service (irrespective of whether they are CERT volunteers, ambulance volunteers, fire volunteers, or any other volunteers for the City), to encourage all volunteers to recruit other volunteers, and to use the enclosed 2022 Merchandise as an incentive to other potential volunteers who may be recruited, and as thanks for their previous service to the City; OMMF agrees to account to the City Recorder-Treasurer, accordingly; all Parties stipulate and agree that each potential volunteer shall receive similar or like "gift bags" and further that such "gift bags" should have a nominal, or *de minimus* value of less than \$25.00, and that all such gift bags shall have a tag promoting the City of Fairfield Bay. In additional consideration of 2022 Merchandise distributed any time after April 10, 2023, for which OMMF and its predecessors are unable specifically to account, OMMF agrees that it shall specify on all billboards advertising the 2023 Festival that it is promoting an attraction and event in the "City of Fairfield Bay" which welcomes or otherwise encourages people to visit the City of Fairfield Bay and attend the 2023 Festival; OMMF agrees to account to the City Recorder-Treasurer, accordingly, showing the time, date, and placement of billboards; all Parties stipulate and agree that the value of this advertising and promotion of the City shall be approximately 1/3 of the total value of the billboard campaign (so approximately \$5,500.00 of a \$17,000 billboard campaign). City agrees to ask the City Council to approve this disposition of the

2022 Merchandise, which might otherwise not have any useful value to the City, after City agreed that it would not put on its own Moonshine Festival in 2023.

15. FAIRFIELD BAY CONFERENCE CENTER USAGE: Parties stipulate and agree that the revision to the "Group Booking Proposal," initially dated July 27, 2023, and revised on August 29, 2023 (a copy of which is attached hereto), is a good faith basis for use of the Fairfield Bay Conference Center, and that such an expense is a regular and expected cost of putting on an event such as the 2023 OMMF Moonshine Festival; the Parties stipulate and agree that this is the rate at which the City normally will rent out its Conference Center for use by a "festival," event, or the like (for a similar duration). The Parties stipulate and agree that OMMF has previously declined to use the Fairfield Bay Conference Center for the 2023 Festival, and made arrangements to use other facilities instead, when the Parties were unable to agree on the appropriate price; the Parties stipulate and agree that there is no longer any disagreement over the August 29, 2023, price, and that it is an appropriate price. Likewise, the Parties stipulate and agree that OMMF has a financial obligation to pay for their substitute facility, and that it is too late for OMMF to cancel that facility, given the City's inability to guarantee that the City Council will timely pass a Resolution approving this Memorandum of Understanding.

All Parties stipulate and agree that there has also been a mutual misunderstanding concerning the facilities that OMMF may be able to utilize for certain of its vendors (artists and other small businesses) during the 2023 Festival. OMMF currently does not have sufficient capacity to handle a "severe weather" event, the type of which occurred during the 2022 Moonshine Festival, unless OMMF has the ability to use the Fairfield Bay Conference Center for artists and small businesses ancillary to performances of musical acts and other "stage events."

Notwithstanding the foregoing, the Parties stipulate and agree that there has likewise been a misunderstanding between them concerning Conference Center use, which misunderstanding involves "electricity usage" normally accorded large events, and the like. City has previously committed to seeking an upgrade of its electrical facilities. All Parties previously agreed that City would not be able to upgrade its facilities in 2023. The assumption made in the previous understanding was that City would routinely authorize use of its facilities at the Conference Center in a manner consistent with prior usage, that is, using Conference Center electrical power supplies (and access devices, sometimes called "power petals" or "power panels"); provision of such electrical power supply is colloquially referred to as "quiet power" – or the provision of electrical power that does not require supplemental gas or diesel generators.

City does not have the current capability to differentiate between "Conference Center" users and non-Conference Center users of its electrical power, nor does it have the resources to investigate how or whether to do so for the 2023 Festival. All Parties stipulate and agree that use of the City's Conference Center "electrical power" capacity, consistent with that provided to other festivals and events, is part and parcel of any contractual agreement for use of the Fairfield Bay Conference Center, and that City will not disaggregate that use under current conditions. In order to allow OMMF to use any part of the electric power through the Conference Center, therefore, all Parties stipulate and agree that it would be impossible for the City to have any other use of its Conference Center during this time (November 1, 2023, to November 5, 2023, at 12 noon). Consequently, Parties stipulate and agree, for the 2023 Festival, on a one-time basis, and in order to accommodate OMMF's unique needs, given the previous misunderstandings, that City shall lease the Fairfield Bay Conference Center to OMMF as set forth on the July 27, 2023 "Group Booking Proposal" – as revised on August 29, 2023, attached hereto, albeit at the rate of \$1.00 (One Dollar). OMMF shall submit a single check, specifying its agreement to lease the Conference Center under these conditions, with the executed Group Booking Proposal (substituting only the payment amount), no later than six (6) calendar days after this MOU is approved by the City Council of Fairfield Bay (if such approval is obtained), in order to secure use of the Fairfield Bay Conference Center under all of the other terms and conditions set forth in the "Revised August 29, 2023" Group Booking Proposal.

All Parties agree that City shall pay its electrical contractor (such as Swenson Electric), or its electricity provider (such as Petit Jean Electric Coop), or either of them, or both of them, for the use of electrical power at the Fairfield Bay Conference Center for any and all billing periods that include November 1, 2023, up to, and including November 5, 2023, which shall include the provision of electrical power to OMMF for the 2023 Festival, in accordance with its usage of the Conference Center. All Parties agree that City may make payments, accordingly, using funds in the City's "Special Event" account for these payments, up to \$1,000.00 (One Thousand dollars), or such funds remaining in the City's Special Event account in order to pay the maximum possible amount for electrical contractors and electricity, accordingly. OMMF stipulates and agrees that it has the concurrence of its entire Board of Directors for this use of funds from the City's Special Events account. All Parties stipulate and agree that there is no "accounting for" a day's use of electricity, and that the "period" for which the bill (or invoice) is received (for the Conference Center) shall be sufficient proof for all concerned that the payment is for "arts, entertainment, and other special events."

16. OMMF will be responsible for operating the Festival, and complying with the terms of this Memorandum, and other City Ordinances and municipal code, and state and federal law, accordingly.
17. City will not be operating the Festival, but will have its ordinary responsibilities of municipal government, and authorities accordingly. City shall not have specific obligations, otherwise, over and above its ordinary responsibilities, unless specifically set forth herein, or otherwise agreed in writing at least thirty (30) days before set-up of Festival begins.
18. All other expenses for Festival shall be directly billed to OMMF. Parties agree that City shall not be responsible for payment of any other expenses of Festival, nor other expenses of OMMF, other than as set forth, specifically, herein, or as may be set forth in writing signed by all Parties.
19. CLARIFICATION OF POINTS OF CONTACT FOR 2023 EVENT: The 2023 OMMF Festival is now fewer than sixty (60) days away. All Parties agree that time is of the essence. Consequently, for the 2023 Festival, all Parties agree to the following designations:
 - a. INCIDENT COMMAND: Doni Hovick is the Incident Command Director with primary responsibilities as set forth in the April 2023 Memorandum of Understanding; Doug Forsman is Doni Hovick's assistant, and has Hovick's full authority; since Forsman has been involved in the operational aspects, he is the only person responsible for Incident Command discussions in the absence of Hovick, and when Hovick is unavailable. Any dispute or misunderstanding of the division of duties between the two of them shall be resolved by Doni Hovick.
 - b. COORDINATOR (code enforcement and non-public safety matters): Dallas Clark shall be the City's Coordinator, and should be included by OMMF in any meetings or other pre-event planning for all purposes.
 - c. CITY COUNCIL, CITY ADMINISTRATION, CITY EXECUTIVES: The City Council designates **ROGER HOOPER**, Budget Committee Chairman, as the sole liaison for any other City matters requiring review or approval of the City; all Parties understand that Hooper's abilities are constrained as he is a Member of the City Council, and may therefore be required to submit items to the Council for its approval at a public meeting of the Council.

- d. OMMF designates **DONALD FARRAR, III**, as Festival Director, and as the primary contact for the Festival with the City of Fairfield Bay; OMMF agrees that Farrar will attend all City Council meetings, including regularly-scheduled City Council Work Sessions, to provide any updates and information needed, and to answer questions made by the Mayor, the Recorder-Treasurer, and any Member of the City Council; to the extent possible, OMMF agrees that Farrar will attend all Special Meetings of the City Council from September 5, 2023, to November 5, 2023, for the same purpose.
- e. To the extent not set forth herein, all Parties agree that they may consult with counsel of their own choosing for other matters, given their agreement that time is of the essence.

20. **CONCURRENCE IN TRANSFER OF FUNDS:** All Parties stipulate and agree that the City of Fairfield Bay has sole and exclusive right to appropriate and expend funds in its Special Event Account, initially set up and designated in 2022 as part of the City's 2022 Moonshine Festival event, as those funds are proceeds of the 2022 Moonshine Festival, the funding for which was donated to the City. While not legally necessary, all Parties concur in the City Council's approval of an immediate transfer from the City's Special Event account, to its General Account, in the amount of \$6,000.00 to offset the City's expenditures of funds for legal services, and all Parties further stipulate and agree that the City has utilized legal services for the purpose of putting on special events, arts, and entertainment in the City of Fairfield Bay, in an amount of no less than \$6,000.00, from January 1, 2023, to the date of execution of this Memorandum of Understanding. City may use such funds in its General Account for any lawful purpose, and any appropriation approved, or previously approved, by the City Council.

21. **CITY'S SPECIAL EVENTS ACCOUNT:** All Parties agree that Roger Hooper, City Council Member, and current Chairman of the City Council Budget Committee, shall have authority to submit to the Council, by appropriate Resolution or Ordinance, the means for the City to appropriate, and expend, any funds remaining in the account currently designated as the Special Event Account, initially set up and designated in 2022 as part of the City's 2022 Moonshine Festival event. Hooper may recommend utilization of funds for the 2023 fiscal year, and further may recommend utilization of such funds for the 2024 fiscal year (for example by including such expenditures in the 2024 Budget Ordinance normally adopted by the City in November or December of the current calendar year). Upon approval by the City Council, those designations shall be deemed acceptable, approved, and agreed by all Parties herein. OMMF

stipulates that such expenditures have the concurrence of primary source of OMMF's initial funding, Mr. Rod Corley, who is a member of OMMF's Board of Directors.

22. This Memorandum of Understanding is effective for 2023; this Memorandum of Understanding is SUPPLEMENTAL TO, and not a replacement for, the Memorandum of Understanding signed on or about April 10, 2023 between these Parties.
23. STIPULATION AND UNDERSTANDING: NOT AN AGENT: OMMF stipulates and agrees that the City of Fairfield Bay, its employees, officers, elected officials, contractors, volunteers, Coordinator, Incident Command Director, Deputy Incident Command Director, police officers, Conference Center Director, and others ARE NOT AGENTS FOR OMMF. Likewise, City of Fairfield Bay stipulates and agrees that OMMF, its Board of Directors, Festival Director, Officers, employees, contractors, and volunteers ARE NOT AGENTS FOR THE CITY OF FAIRFIELD BAY.
24. NO GUARANTEE AND HOLD HARMLESS: All Parties stipulate and agree that City, by agreeing to enter into, and pay contractors to provide certain services (Transportation, Site Cleanup, Private Security), on a one-time basis for 2023, does not guarantee the quality, timeliness, effectiveness, nor performance of any of those duties. All Parties stipulate, understand and agree that, given the timing of this Memorandum of Understanding, and that time is of the essence, City has determined that only the three vendors previously identified by OMMF can timely perform the three services in the time and manner that meets the expectations of the Parties for the 2023 Festival; assuming the City Council approves, on a one-time basis, City stipulates and agrees that it will not have the time to obtain the services of different competitors who might offer a different price for a different – and potentially incompatible - quality of service for the 2023 Festival. OMMF stipulates and agrees that it will hold City harmless for the performance (or lack of performance) of any contractor for Transportation, Site Cleanup, or Private Security in 2023.
25. This Memorandum is not transferrable to any other entity.
26. Entire Agreement: All prior negotiations of Parties relating to the subject of matter hereof (2023 Festival) have merged in, and are superseded by, this Memorandum of Understanding, which contains the entire agreement of Parties. No Party may vary the terms of this Memorandum of Understanding without the signed, written agreement of the other Party.

27. Drafting: Parties agree that this Memorandum of Understanding has been mutually drafted by Parties, and that each separate Party has had ample opportunity to obtain legal review of this document prior to execution.
28. Venue and Jurisdiction: Venue for any enforcement action shall be in Van Buren County, Arkansas, exclusive of any other jurisdiction. Circuit Court in Van Buren County, Arkansas shall have subject matter and personal jurisdiction over Parties, exclusive of any other jurisdiction. Attorney's fees, costs, and expenses, shall not be awarded to either Party as part of the damages in the event of any enforcement action being filed. PRIOR TO INITIATING SUIT, the Party alleging breach of duties set forth herein shall initiate a request for non-binding mediation, before an Arkansas-licensed mediator, who shall also be an Arkansas-licensed attorney; the mediator shall not live in Van Buren County, nor any county adjoining Van Buren County; mediation must take place within sixty (60) days of initial request; cost of the mediation shall be borne by the Party seeking it, initially; the Party seeking mediation shall choose the mediator; the Party against which mediation is sought shall choose the venue, date, and time of the mediation; the Party against which mediation is sought has the right to object to the mediator chosen initially, without providing any reason for doing so; such a mediator is precluded from serving as a mediator.
29. Parties understand and agree that this Memorandum, and any orders, invoices, payments, and correspondence concerning this Memorandum of Understanding are subject to Arkansas Freedom of Information Act requirements. Parties understand and agree that this Memorandum of Understanding is made pursuant to the laws of the State of Arkansas, the Municipal Code and Ordinances of the City of Fairfield Bay, and the laws of the United States of America.
30. Payment requirements: payment of any amounts due shall be made to City no fewer than thirty (30) days before set up of Festival, unless otherwise specifically provided for other payment timing, in writing, herein, above. In the absence of any other provision, incidental payments to City shall be made as soon as possible, and no later than five (5) calendar days after conclusion of clean-up and tear-down of the Festival, annually. Where there are times of payment specified, the specific timing shall govern over this general paragraph.
- 31. THE PERSONS SIGNING BELOW SHALL BE THE ADMINISTRATORS OF THIS MEMORANDUM OF UNDERSTANDING. THE PERSON SIGNING ON BEHALF OF OMMF STATES UNDER PENALTY OF PERJURY, BY HIS OR HER SIGNATURE BELOW, THAT HE OR SHE IS AUTHORIZED TO MAKE THIS AGREEMENT FOR AND ON BEHALF OF OMMF, AND HAS**

RECEIVED FORMAL APPROVAL FROM OMMF BY VOTE OF THE BOARD OF DIRECTORS, OR AS OTHERWISE AUTHORIZED BY LAW.

32. Parties understand and agree that this Memorandum of Understanding is subject to submission and approval by vote of the City Council for the City of Fairfield Bay, as an attachment to an appropriate Resolution or Ordinance. **Parties understand and agree that Mayor of City cannot commit the City Council to vote a certain way, as only the City Council can vote on any Resolution or Ordinance at a meeting of the City Council called in accordance with the Freedom of Information Act.**
33. Parties understand and agree that City cannot obligate itself to pay for expenses without the approval of the City Council, both in a Budget Ordinance (or supplemental Budget Resolution), and in a closing Budget Ordinance for each fiscal year. Parties understand that City is subject to regular and systematic audits by the Bureau of Legislative Audit, and that City normally adopts any and all recommendations of Legislative Audit to remain in compliance with Arkansas law, as it will do concerning this Memorandum of Understanding. OMMF agrees that City may make appropriate modifications to this Memorandum of Understanding in order to comply with recommendations made by Legislative Audit.
34. City shall retain the original Memorandum of Understanding. City Recorder-Treasurer shall provide a certified copy of this Memorandum of Understanding to OMMF, as an exhibit to the City Council's Resolution, upon passage of an appropriate Resolution of the City Council adopting it. The certified copy, attached to the City's Resolution shall have the same effect, in every respect, as the original in the City's permanent records.

IN WITNESS WHEREOF, Parties hereto set their hands and seals this ____ day of September, 2023, in accordance with a Resolution of the City Council at a specially-called meeting.

Ozark Moonshine & Music Festival, Inc.

Printed Name below

Authorized Agent for OMMF

Print name of Authorized Agent

City of Fairfield Bay

Printed Name

Jackie Sikes, Mayor
City of Fairfield Bay

Jackie Sikes, Mayor
City of Fairfield Bay, Arkansas

ACKNOWLEDGMENT

STATE OF ARKANSAS)
VAN BUREN COUNTY) ss.

On this ____ day of September, 2023, before me personally appeared _____, also known as "Authorized Agent for Ozark Moonshine & Music Festival" in this Memorandum of Understanding, who proved to me through government issued photo identification to be the above-named person, in my presence executed the foregoing instrument and acknowledged that ____ executed the same as his/her free act and deed, in accordance with his/her intent as authorized agent for Ozark Mountain & Music Festival, Inc., and as authorized by the Board of Directors of Ozark Mountain & Music Festival, Inc.

[Notary Seal below]

Notary Public

My commission expires: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
VAN BUREN COUNTY) ss.

On this ____ day of September, 2023, before me, personally appeared Jackie Sikes, Mayor of the City of Fairfield Bay, well-known or who proved to me through government issued photo identification to be the above-named person, in my presence executed the foregoing instrument and acknowledged that she executed the same as her free act and deed, in accordance with her authority as Mayor of the City of Fairfield Bay, Arkansas, as authorized by a Resolution of the City Council.

[Notary Seal below]

Notary Public

My commission expires: _____