

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**MANAGEMENT AND LEASE AGREEMENT with
THE SAN ANTONIO ZOOLOGICAL SOCIETY, INC.**

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 2023-_____ dated _____, 2023, and San Antonio Zoological Society, Inc. (hereinafter referred to as "SOCIETY"), a Texas Non-Profit Corporation. The SOCIETY and CITY shall collectively be referred to as the "PARTIES."

PREAMBLE

WHEREAS, in 1914 Colonel George W. Brackenridge donated buffalo, elk, deer, monkeys, a pair of lions and four bears on land he deeded to the City of San Antonio; and

WHEREAS, the CITY owns property identified as the San Antonio Zoo (hereinafter referred to as the "Zoo") which is located within Brackenridge Park; and

WHEREAS, since the inception of the San Antonio Zoo, the CITY entered into several agreements with the SOCIETY to operate, manage, and maintain the San Antonio Zoo; and

WHEREAS, historically, Brackenridge Park has contained a variety of concessions and amusement rides including but not limited to the miniature passenger train, souvenir concessions, and food and beverage concessions; and

WHEREAS, through Ordinance No. 93463, dated February 15, 2001, the PARTIES entered into a Miniature Train Amusement Ride, Souvenir, and Food and Beverage Independent Contractor Concessions Agreement; and

WHEREAS, the Society owns the animal and plant collections, the miniature passenger trains, and amusement rides; and

WHEREAS, the CITY and the SOCIETY desire to combine the two separate agreements and continue their long-standing relationship for the benefit of the citizens and visitors of San Antonio; and

NOW THEREFORE, the PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

- 1.1 The term of this Agreement shall commence upon City of San Antonio City Council approval and expire on December 31, 2044, unless earlier terminated as provided under the terms of this Agreement.
- 1.2 So long as the SOCIETY is not then in default of any of the provisions of this Agreement or any other agreements with the CITY, this Agreement shall be extended for one (1) additional, twenty (20) year renewal term subject to City Council approval.

II. GENERAL RESPONSIBILITIES AND RENT

- 2.1 SOCIETY shall maintain its non-profit status with the Secretary of State and remain in good standing throughout the term of this Agreement.
- 2.2 SOCIETY shall maintain insurance, as outlined in Section XI. Insurance Requirements of this Agreement throughout the term of this Agreement.

- 2.3 SOCIETY Board of Directors shall include a City Liaison to the Board as an ex-officio member. The CITY liaison shall be the Parks and Recreation Director (hereinafter referred to as the "Director"), or other CITY staff member as identified by the City Manager.
- 2.4 Throughout the term of this Agreement and any extensions thereof, SOCIETY shall maintain membership in the Association of Zoo and Aquarium (AZA) and shall maintain accreditation with said Association or with such other similar organization which has been approved in writing by both SOCIETY and CITY (the "Alternate Organization").
- 2.5 Throughout the term of this Agreement and any extensions thereof, SOCIETY shall operate the miniature passenger train and Kiddie Park rides in accordance with the applicable law, including but not limited to Texas Occupation Code, Title 13. Sports, Amusements, and Entertainment, Subtitle D. Other Amusements and Entertainment, Chapter 2151. Regulation of Amusement Rides. At any time during this agreement that the referenced code change, the SOCIETY shall abide with any changes in the Codes(s), in accordance with State law.
- 2.6 SOCIETY shall maintain the Edwards Aquifer water permit as outlined in Section VII. Utilities & Water Provisions.
- 2.7 In consideration of the public benefit derived from the SOCIETY's operations, maintenance, educational programs, and general programming, the SOCIETY shall not owe any rent under this Agreement.

III. ACCEPTANCE AND CONDITIONS OF PREMISES

- 3.1 The SOCIETY shall accept the Leased Premises (hereinafter referred to as "PREMISES") described in Exhibit A in the present condition "AS IS", the Leased Premises being currently suitable for the permitted use.
- 3.2 All permanent structures existing at the San Antonio Zoo and those added during the term of this Agreement shall be the property of the CITY. CITY shall provide insurance coverage for its property in conformance with its general property insurance program.

IV. GENERAL OPERATING REQUIREMENTS

- 4.1 SOCIETY shall establish operating days and hours for the Zoo and auxiliary experiences, so long as the hours are within the operating hours of Brackenridge Park and provided to the CITY annually. Special events and programming outside of park operating hours shall require approval from the Director.
- 4.2 SOCIETY shall employ, pay, and supervise all personnel deemed necessary for management, operations, and maintenance, and programming.
- 4.3 SOCIETY shall continue to own all plants, all mammals, birds, reptiles, amphibians, fishes, and invertebrates (hereinafter collectively referred to as the "LIVING COLLECTION"). Subject to all applicable laws, SOCIETY may buy, sell, trade, loan, borrow, donate, receive as donations, and breed specimens within the moral and ethical guidelines of the AZA, or the Alternate Organization (as applicable).
- 4.4 SOCIETY shall operate, manage, and maintain the miniature passenger trains, concessions, and Kiddie Park. SOCIETY shall own all amusement rides and the miniature passenger trains.
- 4.4.1 Miniature passenger trains should meet the Americans with Disabilities Act (ADA) requirement of an opening of at least thirty-two inches (32") with an appropriate lift to accommodate wheelchair access.
- 4.4.2 SOCIETY shall maintain the following stops (1) the stop at Ave. B and Tuleta for the Witte Museum; (2) the stop on N. St. Mary's St. for the Japanese Tea Garden; (3) the Main Train Depot. Additional stops may be added as agreed upon by the PARTIES.

4.5 CITY shall have the right, in coordination with the SOCIETY, to temporarily suspend activities in accordance with special events, construction, weather related, and/or local government restriction closures. CITY shall notify the SOCIETY at the earliest opportunity however in some instances the notification may be immediate.

V. REVENUE AND FEES

5.1 SOCIETY shall collect and retain all revenues from all aspects of its operations for management, operations, maintenance, development, educational opportunities, and programming. Revenue may include, but not limited to: gate admission, special event, food and beverages sales, rides, performances, special exhibits, sightseeing vehicles, souvenirs, gifts, novelties, membership fees, donations, bequests, special benefit events, fund raisers, promotions, public and private grants.

5.2 GENERAL ADMISSION. No sooner than twelve (12) months following the effective date of this Agreement, Zoo general admission fees may be adjusted, subject to the following:

5.2.1 SOCIETY shall request, in writing, Director's approval at least thirty (30) days prior to any proposed increase of general Zoo admission fees. In no instance shall admission fees be raised by more than a cumulative eighteen percent (18%) during any two (2) year period during the term of this agreement.

5.2.2 Should economic or financial circumstances require general Zoo admission fee increases in excess of those authorized in this Agreement, such increases shall be approved by the CITY by ordinance passed and approved by the City Council of the City of San Antonio.

5.2.3 SOCIETY may, at its discretion, charge a lesser than currently established general Zoo admission fee for special promotions, membership benefits, or other activities designed to increase Zoo attendance.

5.3 LOCAL DAYS. SOCIETY shall provide discounted admission to local residents; dates shall be agreed upon by the PARTIES.

5.4 SPECIAL EVENT ADMISSION. SOCIETY may establish special event admission fees for special exhibits and events. Provided, however, any such special admission fees which are to be in effect longer than 120 days must be approved by the Director in writing prior to its implementation.

5.5 EXPERIENCES. No sooner than twelve (12) months following the effective date of this Agreement, SOCIETY will provide notice of pricing of ancillary experiences for the upcoming year. Pricing may be provided in range format to account for pricing fluctuations that occur through the year which is known as "Dynamic Pricing".

5.6 TRAIN ADMISSION. No sooner than twelve (12) months following the effective date of this Agreement, train admission fees may be adjusted, subject to the following stipulations:

5.6.1 SOCIETY shall request, in writing, Director's approval, at least thirty (30) days prior to any proposed increase of train admission fees. In no instance shall admission fees be raised by more than a cumulative eighteen percent (18%) during any two (2) year period during the term of this agreement.

5.6.2 Should economic or financial circumstances require train admission fees increases in excess of those authorized in this Agreement, such increases must be approved by the CITY by ordinance passed and approved by the City Council of the City of San Antonio.

5.6.3 SOCIETY may, at its discretion, charge a lesser than currently established train admission fee for special promotions, membership benefits, or other activities designed to increase Zoo attendance.

VI. MAINTENANCE OBLIGATIONS

6.1 SOCIETY shall bear, at its sole cost and expense all costs related to the operations and maintenance of the Zoo, miniature passenger trains, and Kiddie Park rides. These shall include, but not be limited to, costs of managing, operating, maintaining, developing, equipment, supplies, utilities, and all capital improvements which the SOCIETY elects to carry out, or are required to carry out.

6.2 SOCIETY will be responsible for maintaining the PREMISES in good, safe, and clean operating condition and repair, reasonable wear, tear, acts of God, or unavoidable accident insured casualty loss, only excepted. Such maintenance shall include, but not limited to, interior building plumbing, plumbing fixtures, interior plumbing

lines and plumbing connections and interior and exterior electrical fixtures, lamps, and/or bulbs, wiring and connections, and interior walls, flooring, doors, plate glass and other interior and exterior improvements located upon the PREMISES, as well as, (i) the roof, foundation, main structural members, beams and exterior walls of the PREMISES, including window frames and plate glass, and (ii) heating ventilation and air conditioning equipment in good working order and repair and in good, clean, safe and sanitary condition (usual wear, tear, acts of God, or unavoidable accident insured casualty loss, only excepted). SOCIETY shall not commit or permit any waste to the PREMISES. The duty to maintain the PREMISES shall also extend to the train track, train track ballast, all rolling stock in use, outbuildings (e.g., ticket booths, depot(s) and concession, stand(s)), novelty/souvenir shop, and serving and eating areas. The PREMISES shall be operated in a condition which conforms with all applicable minimum building and property standards as mandated by the CITY of San Antonio's Building Inspections Department and with all applicable minimum standards mandated by the CITY's San Antonio Metropolitan Health District. This maintenance shall include any necessary maintenance, repairs, updating, or improvements required for the issuance of a Certificate of Occupancy upon SOCIETY occupying and utilizing the PREMISES. In connection therewith the Parks Department will coordinate with SOCIETY and the San Antonio Buildings Inspection Department of building inspections in reviewing the PREMISES and in determining all of those modifications that will be required to obtain such Certificate of Occupancy. SOCIETY shall comply with all applicable laws of the Texas Alcoholic Beverage Code and all applicable rules and regulations promulgated therein. Except as set out below, relating to the areas adjacent to the train track for the Miniature Train Ride, SOCIETY also assumes any and all responsibility for the day-to-day cleaning of the PREMISES. SOCIETY shall be responsible for the prompt removal and disposal of waste, trash and garbage from those portions of the PREMISES other than the areas adjacent to the train track for the Miniature Train Ride and will keep PREMISES clean and in good mechanical order at all times, reasonable wear, tear and insured casualty loss excepted.

- 6.3 SOCIETY shall keep all areas within the PREMISES free of graffiti.
- 6.4 SOCIETY shall maintain all amenities and structures in good and working order, repair as necessary.
- 6.5 SOCIETY shall promptly repair any damage to the PREMISES. SOCIETY shall have no obligation to repair damage caused by CITY or CITY authorized contractors.
- 6.6 Notwithstanding any contrary provisions, should the PREMISES be damaged by fire, tornado, or other casualty, CITY shall be under no obligation to rebuild or repair the PREMISES.
- 6.7 CITY reserves the right to inspect the PREMISES without prior notification to the SOCIETY.
- 6.8 CITY reserves the right to engage a third-party licensed inspector to provide an independent safety inspection and report to the CITY when the miniature passenger train and/or Kiddie Park rides have been halted for safety and/or ride failure reason.

VII. UTILITIES & WATER PROVISIONS

- 7.1 **ELECTRIC UTILITIES.** SOCIETY shall be responsible for all electric utilities. SOCIETY shall make payments directly to the utility company.
- 7.2 **WATER & SEWER UTILITIES.** SOCIETY shall be responsible for all water and sewer utilities. SOCIETY shall make payments directly to the utility company. SOCIETY shall comply with the CITY's Conservation Ordinance, including year-round restrictions, drought restrictions, and charity car wash restrictions. If the SOCIETY receives fines or penalties for non-compliance with the CITY's Conservation Ordinance or any watering restrictions that SOCIETY shall be responsible for the payment of the fines or penalties. SOCIETY shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance.

- 7.3 WATER PROVISION. The following provision only applies to the 30.4 acre footprint of the Zoo, this excludes to parking garage, Donkey Barn (administrative offices), Train Depot, and the Youth Orchestra Building.
- 7.3.1 Throughout the term of this Agreement and any extensions thereof, and at the CITY's sole discretion, the CITY shall pay for and provide up to 375-acre feet of potable and/or non-potable water annually to the SOCIETY which will be referred to as the "ANNUAL WATER ALLOCATION".
 - 7.3.2 CITY shall review water usage monthly and provide SOCIETY with an annual usage amount at the end of each calendar year.
 - 7.3.3 If the SOCIETY utilizes more than the ANNUAL WATER ALLOCATION in one calendar year, SOCIETY shall reimburse CITY for the costs that exceed 375-acre feet. CITY will send the SOCIETY an annual invoice for the excess water usage.
 - 7.3.4 As in incentive for water conservation the CITY shall pay the SOCIETY, one half (1/2) of the applicable water rate for every acre foot of potable water SOCIETY does not use below the ANNUAL WATER ALLOCATION of 375-acre feet. CITY shall provide the SOCIETY with the annual usage amount and the SOCIETY will invoice the CITY for the unused acre feet.
- 7.4 WATER RIGHTS & WELL. SOCIETY shall continue to operate and maintain an Edward's Aquifer water well (hereinafter referred to as "WELL") which provides raw water required for the LIVING COLLECTION.
- 7.4.1 SOCIETY shall maintain the Edward's Aquifer permit for water and pumping rights.
 - 7.4.2 SOCIETY shall be liable for the maintenance and upkeep of the WELL, utility costs associated with operating the WELL, and all payments/fees related to water withdrawal and permitting.
 - 7.4.3 PARTIES understand and agree that the maintenance of the water rights referenced in this section will require the best efforts and cooperation of CITY and SOCIETY.
 - 7.4.4 A WATER TREATMENT FACILITY is located within the PREMISES. CITY shall maintain the WATER TREATMENT FACILITY and all associated costs for maintenance and improvements.
- 7.5 OTHER UTILITIES. SOCIETY shall pay for other utilities directly which may include but not limited to, garbage and recycling collection, telephone lines and connections, cable/satellite television connections, security services, internet services, and any other utility service used within the PREMISES. CITY will not be liable to SOCIETY for any damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements, or any cause beyond the control of the CITY.

VIII. IMPROVEMENTS

- 8.1 SOCIETY may make improvements to the PREMISES. All permanent improvements, regardless of the value, shall require approval of any necessary CITY departments, boards and/or commissions including, but not limited to, Historic Design Review Commission, Development Services Department; other approvals as required, including but not limited to, Texas Historic Commission.
- 8.2 SOCIETY may not, without the prior written approval of the Director, construct, or allow to be constructed any permanent improvements to the PREMISES or make or allow to be made any permanent alterations to the structures within the PREMISES over \$1,000,000.
- 8.3 SOCIETY shall notify the Director in writing of all capital improvements over \$500,000.00 on the PREMISES.
- 8.4 All improvements made on the PREMISES and/or alterations to permanent structures situated upon the PREMISES made by the SOCIETY shall become the property of CITY upon the end of the term of this Agreement.
- 8.5 The CITY shall not be responsible or liable for, and SOCIETY covenants that it shall not bind, or attempt to bind the CITY for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the PREMISES.

IX. REPORTING

- 9.1 Throughout the term of this Agreement and any extensions hereof, SOCIETY shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation shall be preserved in Bexar County, Texas for at least five years and shall be open to CITY inspection following reasonable notification of intent to inspect by CITY's Director of Finance or other appropriate CITY official(s).
- 9.2 SOCIETY shall furnish to CITY annual financial statements, audited to the level, which is customary for SOCIETY, by which the audit has been conducted by an independent certified public accountant. Audited financial statements shall be submitted ninety (90) days after the end of the SOCIETY's fiscal year.
- 9.3 SOCIETY shall maintain the following records, and upon CITY request, shall make such records available for inspection and copying by authorized CITY representatives at any reasonable time(s) during the term of this Agreement:
- 9.3.1 All reports issued in connection with inspections related to the Federal Animal Welfare Act and, if applicable, SOCIETY's reply to all findings cited in said Animal Welfare inspection report(s); and
 - 9.3.2 The most current AZA or Alternate Organizations (as applicable) accreditation report; and
 - 9.3.3 All changes and amendments to the AZA or Alternate Organizations (as applicable) by-laws, rules, and regulations; and
 - 9.3.4 All reports issued in connection with inspections related to National Association of Amusement Ride Safety Officials (NAARSO), SOCIETY's reply to all findings cited in said inspection report(s).

X. DEFAULTS AND TERMINATION

- 10.1 The following events shall be deemed to be events of default by SOCIETY under this Agreement:
- 10.1.1 SOCIETY shall fail to comply with any term, provision or covenant of this Agreement and shall not cure such failure within sixty (60) days after receipt of written notice thereof to SOCIETY, or, if such default cannot be cured within such sixty (60) day period SOCIETY shall have a reasonable time period to complete such cure if SOCIETY promptly undertakes action to cure such default within sixty (60) days of original written notice and thereafter diligently pursues the same to completion.
 - 10.1.2 The taking by a court of competent jurisdiction of SOCIETY or its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act, insofar as remedies for default are provided for or permitted in such code or act.
 - 10.1.3 Upon the occurrence of an event of default as heretofore provided in 25.1 above, CITY may, at its option, declare this Agreement, and all rights and interest created by it, terminated. Upon CITY electing to terminate, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the ZOO and PREMISES, except, however, for possession of the SOCIETY'S LIVING COLLECTIONS and any personal property owned by SOCIETY, subject to an orderly procedure for protection and relocation of the LIVING COLLECTION and SOCIETY'S personal property.
- 10.2 The following event shall be deemed to be events of default by CITY under this Agreement:
- 10.2.1 CITY shall fail to comply with any term, provision or covenant of this Agreement, provided CITY shall have a period of sixty (60) days from the date of written notice from the SOCIETY within which to cure such default, or, if such default cannot be cured within such sixty (60) day period, CITY shall have a reasonable time period to complete such cure if CITY promptly undertakes action to cure such default within such sixty (60) day period and thereafter diligently pursues the same to completion.
- 10.3 Upon the occurrence of an event of default as heretofore provided in Section 25.3 above, SOCIETY may, at its option, declare this Agreement, and all rights and interest created by it, terminated. Upon SOCIETY electing to terminate, this Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof and SOCIETY shall peaceably quit and surrender to CITY the PREMISES, in good order and condition, normal wear and tear and damage caused by casualty or condemnation

excepted; provided, however, SOCIETY shall retain possession of the SOCIETY'S LIVING COLLECTION and any personal property owned by SOCIETY and shall have a reasonable period of time, not to exceed twenty-four (24) months, in which to remain on the PREMISES in order to provide for the protection and relocation of the LIVING COLLECTION and SOCIETY'S personal property.

10.4 Unless otherwise provided for herein, in the event that this Agreement is terminated for any reason, SOCIETY may continue in possession of the Zoo and PREMISES for the purpose of operating and maintaining the LIVING COLLECTION for a period not to exceed twenty-four (24) months.

XI. INSURANCE REQUIREMENTS

11.1 No later than thirty (30) days before finalizing the LEASE AGREEMENT, SOCIETY must provide a completed certificate(s) of Insurance to CITY's Parks and Recreation Department. The certificate must be:

- a) clearly labeled with the legal name of the event in the Description of Operations block;
- b) completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- c) properly endorsed and have the agent's signature, and phone number,

11.2 If the CITY does not receive copies of insurance endorsements, then by executing this Agreement, SOCIETY certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

11.3 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

11.4 SOCIETY shall obtain and maintain in full force and effect for the duration of this Agreement, at SOCIETY'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If SOCIETY claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	<i>Statutory</i> \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
3. Broad Form Commercial Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by you* g. Explosion, Collapse, Underground Property Hazard Liability h. Sexual Abuse/Molestation i. Broad Form Property Damage to include Fire and Legal Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage *f.) \$500,000
4. Business Automobile Liability: a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence

5. Professional Liability (Claims Made)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Liquor Liability (where applicable)	\$1,000,000.00 per occurrence, with \$2,000,000.00 Aggregate or its equivalent in umbrella or excess liability coverage
7. Builder's Risk (where applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
8. Umbrella or Excess Liability Coverage	\$5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.
9. Environmental Insurance –(Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
*If Applicable	

11.5 SOCIETY must require, by written contract, that all subcontractors providing goods or services MBCF agrees to require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of SOCIETY and provide a certificate of insurance and endorsement that names SOCIETY and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

11.6 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. SOCIETY must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
Attn: Parks and Recreation
P.O. Box 839966
San Antonio, TX 78283-3966

11.7 SOCIETY's insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers' compensation and professional liability policies.
- Endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

11.8 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, SOCIETY shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend SOCIETY'S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

- 11.9 In addition to any other remedies CITY may have upon SOCIETY'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order SOCIETY to stop work and/or withhold any payment(s) which become due to LICENSEE under this Agreement until SOCIETY demonstrates compliance with requirements.
- 11.10 Nothing contained in this Agreement shall be construed as limiting the extent to which SOCIETY may be held responsible for payments of damages to persons or property resulting from SOCIETY'S or its subcontractors' performance of the work covered under this Agreement.
- 11.11 SOCIETY'S insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by City for liability arising out of operations under this Agreement.
- 11.12 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 11.13 SOCIETY and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XII. INDEMNIFICATION

- 12.1 SOCIETY covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to SOCIETY'S activities under this LEASE, including any acts or omissions of SOCIETY, any agent, officer, director, representative, employee, consultant or sublessor of SOCIETY, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this LEASE, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SOCIETY shall promptly advise the CITY in writing of any claim or demand against the CITY, or any claim or demand against the SOCIETY that SOCIETY reasonably anticipates may adversely impact the CITY, known to SOCIETY related to or arising out of SOCIETY'S activities under this LEASE and shall see to the investigation and defense of such claim or demand at SOCIETY'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SOCIETY of any of its obligations under this paragraph.**
- 12.2 It is the EXPRESS INTENT of the parties to this LEASE, that the INDEMNITY provided for in this section (Section 18), is an INDEMNITY extended by SOCIETY to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. SOCIETY further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

XIII. NOTICES

13.1 For purposes of this Agreement, all official communications and notices among the PARTIES shall be deemed sufficient if in writing and shall be (1) mailed, registered, or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283

San Antonio Zoological Society, Inc.
Attn: President & CEO
3903 North St. Mary's Street
San Antonio, TX 78212

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either PARTY must be made in writing and mailed to the other PARTY's last known address within five (5) business days of such change.

XIV. CONFLICT OF INTEREST

14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee;
- parent, child or spouse;
- a business entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the business entity, or (b) 10% or more of the fair market value of the business entity;
- a business entity in which any individual or entity above listed is a (a) subcontractor on a City contract, (b) a partner, or (c) a parent or subsidiary business entity

14.2 SOCIETY warrants and certifies as follows:

- SOCIETY and its officers, employees and agents are neither officers nor employees of the CITY.
- SOCIETY has tendered to the CITY a Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.3 SOCIETY acknowledges that CITY's reliance on the above warranties and certifications is reasonable.

XV. SEVERABILITY OF PROVISIONS

15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future Federal, State or Local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the PARTIES hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the PARTIES hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

15.2 All other provision of this lease agreement notwithstanding, in the event any obligation of CITY set out in this Agreement would cause this Agreement to be void by law or otherwise. the obligation shall be deemed to not be a part of this Agreement and shall be deemed severed from this Lease ab initio. Upon CITY notifying

SOCIETY that nay such provision has been eliminated from the Agreement for the reasons stated above, SOCIETY shall thereafter have the right to elect to terminate this Agreement.

XVI. NON-WAIVER OF PERFORMANCE

- 16.1 No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.
- 16.2 No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY herein or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVII. NON-DISCRIMINATION

- 17.1 As a party to this contract, SOCIETY understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by Federal and State law, or as otherwise established herein.

XVIII. CONTRACTING

- 18.1 Compliance by contractors with this Agreement shall be the responsibility of the SOCIETY. SOCIETY shall be responsible to ensure that all permits required for the activities under this Agreement are obtained.
- 18.2 CITY shall in no event be obligated to any third party, including any sub-contractor of SOCIETY, for performance of or payment for work services.
- 18.3 SOCIETY shall not have liens on the property.

XIX. ENTIRE AGREEMENT

- 19.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XX. CHANGES AND AMENDMENTS

- 20.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and SOCIETY under authority granted by formal action of the PARTIES' respective governing bodies.
- 20.2 It is understood and agreed by the PARTIES hereto that changes in Federal, State and Local rules, regulations, or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law.

XXI. PARTIES BOUND

- 21.1 This Agreement shall be binding on and inure to the benefit of the PARTIES hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided herein.

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed by PARTIES hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the PARTIES hereto.

XXIII. TEXAS LAW TO APPLY

23.1 This Agreement shall be constructed under and in accordance with the laws of the State of Texas, and all obligations of the PARTIES created hereunder are performable in Bexar County, Texas.

XXIV. GENDER

24.1 Words of any gender used in this Agreement shall be held and constructed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

25.1 The captions contained in this Agreement as for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVI. HOLDING OVER

26.1 SOCIETY shall have no right to hold over after the end of the term of this Agreement.

XXVII. AUTHORITY

27.1 The signor of this Agreement for the SOCIETY hereby represents and warrants that they have full authority to execute this Agreement on behalf of the SOCIETY.

27.2 If the signor of this Agreement separates from the SOCIETY, the signor shall have no authority to continue.

27.3 SOCIETY shall not transfer, pledge, or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt to transfer, pledge or other assignment shall be void ad initio and shall confer no right upon any third person.

EXECUTED and AGREED to this the _____ day of _____, 20____.

**CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT**

SAN ANTONIO ZOOLOGICAL SOCIETY, INC.

By: _____
Homer Garcia III, Director

By: _____
Tim Morrow, President & CEO

Date: _____

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Leased Premises Maps