SW/mgc
06/11/09
Item #21

2009-06-11-0498

AN ORDINANCE

AUTHORIZING A 10-YEAR LEASE AGREEMENT WITH THE TEXAS TRANSPORTATION MUSEUM AT MCALLISTER PARK, LOCATED IN COUNCIL DISTRICT 9.

* * * * *

WHEREAS, the Texas Transportation Museum (TTM) is a non-profit organization dedicated to providing a vehicle and train museum to San Antonio citizens and visitors; and

WHEREAS, in consideration of TTM's recent improvements and their desire to secure contributions for future expansion and maintenance of the museum, the Parks and Recreation Department and TTM have negotiated a new ten year Lease Agreement with two ten year renewal options requiring City Council approval; and

WHEREAS, under the terms of their Lease Agreement, TTM will be responsible for all operation, maintenance, and other capital improvements to the property; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee or the Director of the Parks and Recreation Department or his designee, is authorized to execute a 10 year lease agreement with the Texas Transportation Museum (TTM) at McAllister Park, located in Council District 9. A copy of the lease agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance shall be effective on and after June 21, 2009.

PASSED AND APPROVED this 11th day of June, 2009.

M A Y O R
JULIÁN CASTRO

ATTEST: Leticia M. Vacek
City Clerk

APPROVED AS TO FORM: Hollis Young
for City Attorney

Agenda Item:	**21 (in consent vote: 6, 7, 14, 16, 18, 20, 21, 22, 24)**
Date:	06/11/2009
Time:	09:36:17 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a 10-year lease agreement with the Texas Transportation Museum at McAllister Park, located in Council District 9. [A.J. Rodriguez, Deputy City Manager; Xavier Urrutia, Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julian Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Sheila D. McNeil	District 2	x					
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

LEASE AGREEMENT

TEXAS TRANSPORTATION MUSEUM, INC.

This Lease Agreement is made and entered into by and between the **CITY OF SAN ANTONIO**, a Texas Municipal Corporation (herein referred to as "**CITY**"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____ passed and approved by the City Council on _____, 2009 and **TEXAS TRANSPORTATION MUSEUM, INC.** (herein referred to as "**LESSEE**").

1. WITNESSETH

1.1 WHEREAS, **CITY** desires to maintain its parks in the best condition possible while at the same time conserving its resources; and

1.2 WHEREAS, **LESSEE** has constructed, operated and maintained a transportation museum open to the public for educational and historical purposes in McAllister Park; and

1.3 WHEREAS, in consideration of **LESSEE'S** maintenance of hereinafter cited **CITY**-owned property, **CITY** desires to grant permission to **LESSEE** to enter and use said **CITY**-owned property as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the mutual benefits to **CITY** and **LESSEE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. DEMISE OF PREMISES

2.1 **CITY,** for and in consideration of the covenants and promises herein contained to be kept, performed and observed by **LESSEE**, does hereby lease and demise to **LESSEE**, and **LESSEE** does hereby lease and accept from **CITY** for the term hereinafter set out, the real property owned by the **CITY** as outlined on the drawing which is attached hereto as Exhibit A incorporated by reference herein for the purposes of this Lease Agreement, the same as if fully copied and set forth at length. Said real property and improvements (hereinafter referred to as the Leased Premises) are further described as follows:

2.1.1 An area consisting of **37.7928 acres**, located at 11731 Wetmore Road, being part of McAllister Park, New City Block 15677, San Antonio, Bexar County, Texas.

3. TERM

3.1 The term of this Lease is for a ten (10) year period beginning on July 1, 2009 and ending on June 30, 2019, unless terminated sooner according to conditions

herein. As long as **LESSEE** is not in default hereunder, **CITY** and **LESSEE** may extend this Lease Agreement on the Leased Premises for up to and including two (2) additional terms of ten (10) years each, subject to City Council approval, under the same terms and conditions of this Lease Agreement save and except rent which may be adjusted to reflect fair market rental should **LESSEE** become or sublet or assign to a "for profit" entity, provided, however, that in the event that **LESSEE** wishes to exercise its option to extend the term for an additional term or terms, **LESSEE** shall notify the **CITY** in writing of such intent not later than six (6) months prior to the date of expiration of any previous term, including the original term hereof.

4. USE

4.1 The Leased Premises are herein leased to the **LESSEE** for the operation and maintenance of a Transportation Museum and other activities incidental or compatible to a Transportation Museum, and for no other purpose.

4.2 The **LESSEE** agrees not to use the Leased Premises or any building situated upon said Leased Premises, or any part thereof, for any purpose which violates any valid and applicable law, regulation, or ordinance of the United States, the State of Texas, or the City of San Antonio.

4.3 The existence of a residential trailer on the Leased Premises placed thereon by the **LESSEE** prior to this Lease Agreement is hereby acknowledged by the **CITY**. **LESSEE** shall be allowed to maintain the residential trailer currently located on the premises, provided however, such trailer shall only be used by tenant as a caretaker residence. **LESSEE** shall not place any other trailers on the premises or make any changes to the trailer without the prior written approval of **CITY**. **LESSEE** covenants and agrees it will comply with all requirements of the Texas Property Code regarding residential tenancies with regard to the residential trailer. **LESSEE acknowledges and agrees that the Indemnity and hold harmless in Article 14 extends to and covers the CITY from and against any and all claims arising out of this residential tenancy, including, without limitation, any claims arising from the statutory requirements imposed on landlords of residential tenancies.**

4.4 The **CITY** hereby acknowledges **LESSEE**'s conceptual plans to construct a looped railroad track within the boundaries of the Leased Premises described in Exhibit A, at some time in the future, the purpose of said track being to provide an extended train ride service for visitors to the Texas Transportation Museum. **CITY** hereby agrees to the construction of the looped track extension within the boundaries of the Leased Premises subject to the following conditions:

4.4.1 Submission of detailed plans and specifications for said track to **CITY**, through its Director of Parks and Recreation for review and written approval prior to the start of any construction.

4.4.1.1 Such plans shall additionally be subject to review and approval by such Boards, Commissions, and review agencies deemed necessary and proper by the **CITY**.

4.4.2 Submission of documented proof by **LESSEE** to the Director of Parks and Recreation of sufficient financial resources to complete the proposed track in phases of construction.

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 **LESSEE** had full opportunity to examine the Leased Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LESSEE'S** taking possession of the Leased Premises shall be conclusive evidence of **LESSEE'S** acceptance thereof in good order and satisfactory condition, and **LESSEE** hereby accepts the Leased Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. **LESSEE** accepts the Leased Premises with the full knowledge, understanding and agreement that **CITY** disclaims any warranty of suitability for **LESSEE'S** intended commercial purposes.

5.2 **LESSEE** agrees that no representations, respecting the condition of the Leased Premises, and no promises to decorate, alter, repair, or improve the Leased Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LESSEE** unless the same are contained herein or made a part hereof by specific reference herein.

6. PLANS APPROVAL AND CONSTRUCTION

6.1 Subject to the following conditions, the **LESSEE** shall have the right at any time and from any time during the term of this Lease Agreement to erect, construct, build, maintain, alter, remodel, reconstruct, and rebuild buildings and other improvements within the Leased Premises.

6.1.1 The **LESSEE** shall pay for the cost of any such construction change, alteration, or improvement(s).

6.1.2 Plans, specifications, and proposed location of any new facilities or structural improvements within the Leased Premises shall first be approved by the Director, Parks and Recreation Department, or his designee, and by such Boards, Commissions, and review agencies deemed necessary and proper by the **CITY**.

6.1.3 The Director, Parks and Recreation Department, or his designee shall review the plans and specifications, and in writing, either approve same or note any required changes or corrections which must be made to the plans and specifications within sixty (60) calendar days after receipt of said plans and specifications. If changes or corrections are required by **CITY**, **LESSEE** shall address such changes and/or corrections and resubmit changed and/or corrected plans and specifications to **CITY** for review and approval. **LESSEE** shall not commence construction until final written approval has been given by the Director, Parks and Recreation Department, or his designee.

6.1.4 The approval by the **CITY** of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plan for the Leased Premises and such approval shall not be withheld unreasonably or delayed. Such plans and specifications are not approved for architectural or engineering design and the **CITY**, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications, including tracks which may be constructed.

6.2 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by the **LESSEE** and at any time placed or maintained by the **LESSEE** on any part of the Leased Premises shall be and remain the property of the **LESSEE**; provided, however, that all improvements constructed and all attached fixtures (other than fixtures erected in connection with the display of museum objects), alterations, additions, or improvements made upon the Leased Premises shall become the property of the **CITY** from and after the time that such improvements are made and shall remain the property of the **CITY** after the termination of this Lease Agreement.

7. MAINTENANCE, UTILITIES, AND REPAIR

7.1 **LESSEE** shall furnish and pay for all gas, water, electricity, sewer, cable TV or other utilities, if any, which may be necessary for its operations as authorized herein on the Leased Premises. **LESSEE** further agrees to pay all monthly charges associated with effective maintenance of said operation. Should connection or reconnection of any utility become necessary, **LESSEE** agrees to pay any expenses therefore, unless the same is caused by any acts undertaken by **CITY**. All utilities shall be underground unless otherwise specifically authorized in writing by the Director, Parks and Recreation Department, or his designee.

7.2 The **LESSEE**, at its sole cost and expense and all times during the term of this Lease Agreement and any extensions thereof, agrees to keep and maintain, or cause to be kept and maintained, all buildings, utilities, and improvements located on the Leased Premises in a good state of appearance and repair, reasonable wear and tear excepted.

7.3 **LESSEE** shall, at all times, keep or cause to be kept the Leased Premises free of litter, trash, paper, and other waste and shall conform with all applicable garbage, sanitary, and health regulations of the **CITY**.

7.4 The **LESSEE** shall be strictly responsible for the condition of the Leased Premises and shall maintain the Leased Premises in a safe, clean, neat, sanitary condition and attractive in appearance. The **CITY** shall have the right at reasonable times to make inspections of the Leased Premises and to insure that fire, safety, and sanitation regulations and other provisions contained in this Lease Agreement are adhered to by the **LESSEE**.

7.5 Subject to prior written approval of the Director, Parks and Recreation Department, or his designee, **LESSEE** may erect a chain-link fence no more than

6-foot high along the boundaries of the Leased Premises and/or around other parts of the Leased Premises for the purposes of security and/or safety.

7.6 **LESSEE** shall at its sole expense; keep the Premises in good order, repair, and leasable condition at all times during the Term hereof and shall promptly repair all damages to the Premises or replace any broken fixtures or appurtenances within a reasonable period of time. All such repairs and replacements shall be subject to the approval of the **CITY** through the Director, Parks and Recreation Department, or his designee, and any and all other necessary departments, boards, or commissions of the CITY OF SAN ANTONIO. If **LESSEE** does not promptly make such arrangements, **CITY** may, but is not required to, make such repairs and replacements and the costs paid or incurred by **CITY** for such repairs and replacements shall be deemed additional rent due and payable forthwith.

7.7 **LESSEE** will, at the termination of this Lease Agreement, return the Leased Premises to **CITY** in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.

7.8 **LESSEE** agrees to hold **CITY** harmless for any theft, damages, or destruction of signs, goods, and/or other property of **LESSEE** both during the term of this Lease Agreement and as so left on the Leased Premises after **LESSEE** vacates the Leased Premises. If said signs, goods, and any other property placed by **LESSEE** upon the Leased Premises are not removed by it within thirty (30) days after the Leased Premises are vacated, then the **CITY** may remove same without further notice or liability therefore.

8. REVENUES

8.1 **LESSEE** may accept donations from private sources and from admittees to the transportation museum and may offer for sale souvenirs, printed materials, and other concession items appropriate to operation of a transportation museum. **LESSEE** shall collect all such revenues and retain same for operation, maintenance, and improvements to the Transportation Museum.

8.2 **LESSEE** may establish such membership fee structure for its organization as it deems necessary for the effective management of its organization and for maintenance, operation, and improvements for the effective management of its organization and for maintenance, operation, and improvements to the Transportation Museum.

9. TAXES AND LICENSES

9.1 **LESSEE** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Leased Premises, or upon **LESSEE**, or upon the business conducted on the Leased Premises, or upon any of **LESSEE'S** property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by **LESSEE**. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Lease Agreement by the **CITY**.

10. RENTAL

10.1 **CITY** agrees to charge **LESSEE** no annual rent during the Lease Term for as long as **LESSEE** remains a "non profit" organization. In the event that **LESSEE** becomes a "for profit" organization or sublets or assigns to a "for profit" entity at any time during the Lease Term, **CITY** shall adjust the annual rent to reflect the fair market value rental of the property. Such adjusted rent is to be effective on the day of the month following said change, subletting, or assignment.

11. ASSIGNMENT AND SUBLETTING

11.1 Except as to the parent, subsidiary, or similarly affiliated company, **LESSEE** shall not assign this Lease Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Leased Premises or any part thereof without the prior written consent of **CITY** which may be given only by or pursuant to an ordinance enacted by the **CITY** Council of San Antonio, Texas. Any assignment or subletting by **LESSEE** without such permission shall constitute grounds for termination of this Lease Agreement by the **CITY**.

11.2 Without the prior written consent of **LESSEE**, **CITY** shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Lease Agreement and in the property referred to herein; and, to the extent that such assignee assumes **CITY'S** obligations hereunder, **CITY** shall, by virtue of such assignment, be released from such obligation.

11.3 The receipt by the **CITY** of rent from an assignee, or occupant of the Leased Premises shall not be deemed a waiver of the covenant in this Lease Agreement against assignment, and/or an acceptance of the assignee, or occupant as a **LESSEE**, or a release of the **LESSEE** from further observance or performance by the **LESSEE** of the covenants contained in this Lease Agreement. No provision of this Lease Agreement shall be deemed to have been waived by the **CITY** unless such waiver is in writing and signed by the **CITY**.

12. LIENS PROHIBITED

12.1 The **LESSEE** shall not suffer or permit any mechanics liens or other liens to be filed against the fee title of the Leased Premises or any buildings or improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to the **LESSEE** or to anyone holding the Leased Premises or any part thereof through or under the **LESSEE**.

12.2 If any mechanics' liens or materialmen's liens shall be recorded against the Leased Premises, or any improvements thereon, the **LESSEE** shall cause the same to be removed within thirty (30) days after such liens are recorded, or, in the alternative, if the **LESSEE** in good faith desires to contest the same, the **LESSEE** shall be privileged to do so, but in such case, the **LESSEE** hereby agrees to indemnify and save the **CITY** harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment, such damages to include all costs of court and attorneys' fees.

13. RECORDS AND REPORTS

13.1 **LESSEE** shall establish and maintain complete records of all major objects of display or exhibition purchased by, or donated, or loaned to **LESSEE**. Said records shall state when, where, price, and from whom purchased; or if donated or loaned, by whom, when, and the estimated value thereof. These records shall include information as to ownership of such items. Such records shall be kept on the Leased Premises and shall be available for **CITY** and/or public information at any reasonable time.

13.2 **LESSEE** shall submit an annual report on or before May 1st of each year to the Director, Parks and Recreation Department. The content of said report shall include as a minimum, the following data related to the previous twelve (12) months of operation:

13.2.1 Improvements made to Leased Premises by **LESSEE** during the past twelve (12) months and the cost thereof; and

13.2.2 **LESSEE'S** revenue for the past twelve (12) months from the following sources:

13.2.2.1 Donations from admittees;

13.2.2.2 Donations from other sources;

13.2.2.3 Gross income from sale of merchandise, souvenirs, concessions, etc. by purchase or donation and the value thereof;

13.2.2.4 Income from membership dues; and

13.2.2.5 Any other income.

13.2.3 Newly acquired equipment for exhibits, whether by purchase or donation and the value thereof; and

13.2.4 Plans/intentions for the coming year's improvements on the Leased Premises; and

13.2.5 Number of visitors to the Transportation Museum; and

13.2.6 Certificate of insurance (required year-round); and

13.2.7 Current constitution and by-laws, articles of incorporation, and/or corporation provision/signature of authority.

13.3 **CITY** may conduct periodic inspections of the Leased Premises in order to ensure **LESSEE'S** compliance with the terms of this Lease Agreement. **CITY** shall conduct such inspections at a date and time that is mutually agreed upon by **CITY** and **LESSEE**.

14. INDEMNIFICATION

14.1 **LESSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and**

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, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LESSEE'S activities under this Agreement, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LESSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LESSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.2 The provisions of this **INDEMNITY** 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. **LESSEE** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **LESSEE** known to **LESSEE** related to or arising out of **LESSEE'S** activities under this **MEMORANDUM** and shall see to the investigation and defense of such claim or demand at **LESSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LESSEE** of any of its obligations under this paragraph.

15. INSURANCE REQUIREMENTS

15.1 Prior to the commencement of any work under this Contract, **LESSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY**'s Parks and Recreation Department, which shall be clearly labeled "*Texas Transportation Museum*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this **Agreement** until such certificate and endorsements have been received and approved by the **CITY**'s Parks and Recreation

Department. No officer or employee, other than the **CITY**'s Risk Manager, shall have authority to waive this requirement.

15.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by **CITY**'s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

15.3 **LESSEE**'s financial integrity is of interest to the **CITY**; therefore, subject to **LESSEE**'s right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LESSEE** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **LESSEE**'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:

	TYPE	AMOUNT
1.	Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of $500,000 per occurrence or its equivalent in umbrella or excess liability coverage
2.	Liquor Legal Liability	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence or its equivalent
3.	Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $500,000 per occurrence or its equivalent
4.	Property Insurance: For physical damage to the property of **LESSEE,** including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of **LESSEE'S** property.

15.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **LESSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **LESSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio Department of Parks and Recreation Contract Services Division P.O. Box 839966 San Antonio, Texas 78283-3966	City of San Antonio City Clerk's Office City Hall-Second Floor P.O. Box 839966 San Antonio, Texas 78283-3966

15.5 **LESSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:

A. Name the **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 the **CITY**, with the exception of the workers' compensation and professional liability policies;

B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;

C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**; and

D. Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

15.7 If **LESSEE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**; however, procuring of said insurance by the **CITY** is an alternative to other remedies

the **CITY** may have, and is not the exclusive remedy for failure of **LESSEE** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon **LESSEE**'s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LESSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LESSEE** hereunder until **LESSEE** demonstrates compliance with the requirements hereof.

15.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LESSEE** may be held responsible for payments of damages to persons or property resulting from **LESSEE**'s or its subcontractors' performance of the work covered under this **Agreement**.

15.9 It is agreed that **LESSEE**'s insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

15.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

16. RULES, REGULATIONS, AND PROHIBITED USES

16.1 **LESSEE** shall observe and comply with all laws and ordinances of the **CITY** affecting **LESSEE'S** business.

16.2 No activity or method of operation shall be allowed in, on, or about the Leased Premises, which exposes patrons thereof to nudity or to partial nudity. For the purposes of this provision, the following definitions apply:

16.2.1 Nudity means total absence of clothing or covering for the human body.

16.2.2 Partial nudity means exposure of the female breast or the exposure of the male or female pubic area or buttocks.

16.3 Any nudity as specified above will constitute a violation of this Article and result in an Event of Default.

16.4 The operation of massage business, tanning salon, gambling casino, or gambling of any nature shall not be allowed in, on, or about the Leased Premises.

16.5 Discrimination because of race, color, sex, age, handicap, or national origin, directly or indirectly, in employment, or in the use of, or admission to the Leased Premises is prohibited.

16.6 **LESSEE** shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes and **CITY** ordinances to persons employed in its operations hereunder.

16.7 **LESSEE** shall not encroach on any property outside of the Leased Premises as per Exhibit A attached hereto without written approval from the Director, Parks and Recreation Department, or his designee.

16.8 City of San Antonio City Ordinance No. 95687, passed and approved on April 25, 2002, prohibits the use of glass beverage containers and sale, possession, or consumption of alcoholic beverages in McAllister Park. This ban shall be effective within the Premises as shown on Exhibit A attached hereto until such time as the City of San Antonio City Council amends the aforementioned ordinance in order to permit the sale, possession, or consumption of alcoholic beverages on the Premises.

17. RESERVATIONS: CITY

17.1 The **LESSEE** shall permit **CITY'S** agents, representatives, or employees to enter upon the Leased Premises at all reasonable times, for the purpose of audit or inspection, in order to determine whether the **LESSEE** is in compliance with the terms hereof.

17.2 **CITY** park police and other safety personnel shall have the right of entry on and into the Leased Premises as needed to investigate any circumstances, conditions, or person(s) that may appear to be suspicious. **LESSEE** shall cooperate with all reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the McAllister Park Area. **LESSEE** expressly understands and agrees that **CITY** has not agreed to act and does not act as an insurer of **LESSEE'S** property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

18. DEFAULT AND REMEDIES

18.1 The following events shall be deemed to be events of default by the **LESSEE** under this Lease Agreement:

18.1.1 The **LESSEE**, or its assigns, sublessees, or successors in interest, shall cease to be a non-profit corporation;

18.1.2 The **LESSEE** shall fail to use the Leased Premises for purposes set forth in Article 4;

18.1.3 The taking by judicial execution of the **LESSEE'S** leasehold interest set forth herein or of all of the property placed by the **LESSEE** upon the Leased Premises; and

18.1.4 **LESSEE** initiates any construction or improvement(s) without prior written approval from **CITY** through the Director, Parks and Recreation Department, or his designee.

18.1.5 The **LESSEE** fails to comply with any material term, provision or covenant of this Lease Agreement; and

18.1.6 The taking by a court of competent jurisdiction of the **LESSEE** and its assets pursuant to proceedings under the provisions of any federal or state

reorganization or bankruptcy or code act, insofar as the following enumerated remedies for default are provided for or permitted in such code or act.

18.2 Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, the **CITY** may, after giving written notice to the **LESSEE** and sixty (60) days opportunity by the **LESSEE** to cure the enumerated default and the **CITY'S** requested curative action, declare this Lease Agreement and all rights and interests created by it to be created by it to be terminated, may seek any and all damages occasioned by the **LESSEE'S** default hereunder, or may seek any other remedies available at law or in equity.

18.3 Upon the **CITY'S** election to terminate this Agreement, the **CITY**, its agent or attorney, may take possession of the Leased Premises and lease the same for the remainder of the term at the best rent the **CITY**, its agent or attorney, may obtain for the account of the **LESSEE**, who shall make good any deficiency. Any termination of this Lease Agreement as herein provided shall not relieve the **LESSEE** from the payment of any sum or sums that shall then be due and payable to the **CITY** hereunder, or any claim for damages then or theretofore accruing against the **LESSEE** hereunder, and any such termination shall not prevent the **CITY** from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from the **LESSEE** for any default thereunder. All rights, options and remedies of the **CITY** contained in this Lease Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and the **CITY** shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or at equity, whether or not stated in this Lease Agreement. No waiver by the **CITY** of a breach of any of the covenants, conditions, or restrictions of this Lease Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

18.4 The **LESSEE** shall have the right, within thirty (30) days after the termination of this Lease Agreement, whether such termination be by the expiration of the term or an earlier termination under any provision of this Lease Agreement, to remove from the Leased Premises all of its furniture, fixtures, equipment and furnishings and other property which are not the property of the **CITY** and have not become the property of the **CITY** as herein provided or by attachment to the Leased Premises, and with respect to any damage caused thereby, it shall have the obligation to restore the Leased Premises to its condition prior to such removal, and provided that, if any of the **LESSEE'S** property remains in or on the Leased Premises after ninety (90) days following termination of this Lease Agreement and no renewal agreement has been executed, such property as remains thereon shall be deemed to have become the property of the **CITY** and may be disposed of as the **CITY** sees fit, without liability to account to the **LESSEE** for the proceeds of any sale thereof.

19. MUSEUM OPERATIONAL HOURS

19.1 **LESSEE** shall keep the museum facilities developed and operated pursuant hereto open to the general public a minimum of twenty (20) hours per week. The days of the week and hours thereof shall be determined by **LESSEE**.

20. SIGNS

20.1 **LESSEE** shall construct or erect no signs on or about the Leased Premises visible from adjacent thoroughfares without the prior written consent to the Director, Parks and Recreation Department, or his designee. To this end, **LESSEE** shall, before constructing or erecting any permanent outdoor sign(s) visible to motorists on Wetmore Road or Wurzbach Parkway, submit to the Director, Parks and Recreation Department a schematic drawing, indicating size, material, color, and content of such proposed sign(s). All exhibit-related signs shall be no larger than one hundred and twenty (120) square inches in size and shall be clean, brief and neatly lettered. **LESSEE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other inappropriate matter. **LESSEE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor.

21. FEDERAL GRANT CONTRACT RELATIONSHIP

21.1 **LESSEE** understands that the Leased Premises were acquired by **CITY** with the aid of a federal grant and as such, **LESSEE'S** operations and activities hereunder are subject to grant contract requirements imposed upon **CITY** under Open Space Contract TEX. OSC-11 (G). **LESSEE** covenants that it shall comply with any and all such grant contract provisions which may be applicable to **LESSEE'S** operations hereunder.

21.2 A copy of the aforestated grant contract is available in the administrative offices of the Director, Department of Parks and Recreation, 114 W. Commerce, 11th Floor, San Antonio, Texas 78205, and is available for **LESSEE'S** review at any reasonable time.

22. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and **LESSEE**.

23. SEPARABILITY

23.1 If any clause or provision of this Lease Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease

Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Lease Agreement shall not be affected thereby, and it is also the intention of the parties to this Lease Agreement that in lieu of each clause or provision of this Lease Agreement that is illegal, invalid or unenforceable, there be added as a part of this Lease Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

24. NOTICES

24.1 Notices to **CITY** required or appropriate under this Lease Agreement shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to:

City of San Antonio Department of Parks and Recreation Contract Services Division P.O. Box 839966 San Antonio, Texas 78283-3966	City of San Antonio City Clerk's Office City Hall-Second Floor P.O. Box 839966 San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time.

Notices to **LESSEE** shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to **LESSEE** at:

Texas Transportation Museum, Inc.
11731 Wetmore Road
San Antonio, Texas 78247

Or at such other address on file with the City Clerk as **LESSEE** may provide from time to time in writing to **CITY**.

25. ENTIRE AGREEMENT/AMENDMENT

25.1 This Lease Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LESSEE**.

25.2 No amendment, modification or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

25.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

26. TEXAS LAW TO APPLY

26.1 **THIS AGREEMENT SHALL BE CONSTRUED 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.

27. GENDER

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

28. PARTIES BOUND

28.1 If there shall be more than one party designated as **LESSEE** in this Lease Agreement, they shall each be bound jointly and severally hereunder.

28.2 The covenants and agreements herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by **CITY**.

29. CAPTIONS

29.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Lease Agreement.

30. CONFLICT OF INTEREST

30.1 **LESSEE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

30.2 **LESSEE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

[signature page to follow]

31. AUTHORITY

31.1 The signer of this Lease Agreement for **LESSEE** hereby represents and warrants that he or she has full authority to execute this Lease Agreement on behalf of **LESSEE.**

LESSOR:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

By: _____
Sheryl Sculley, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

LESSEE:

TEXAS TRANSPORTATION MUSEUM, INC.

Jared T. Davis
Printed Name

JARED T. DAVIS
Title

CURATOR
Address

11731 WETMORE ROAD
City, State, and Zip Code

SAN ANTONIO TX 78247
Area Code/Telephone Number

(210) 490-3554