

AN ORDINANCE

93463

AUTHORIZING THE ASSIGNMENT OF THE CITY'S CURRENT BRACKENRIDGE PARK MINIATURE TRAIN AGREEMENT AND THE SOUVENIR AGREEMENT WITH SAN ANTONIO BRACKENRIDGE EAGLE, INC., AND THE FOOD AND BEVERAGE CONCESSION AGREEMENT WITH ALAMO CONCESSION SUPPLY, INC., TO THE SAN ANTONIO ZOOLOGICAL SOCIETY, INC.; AUTHORIZING A NEW SINGLE MINIATURE TRAIN AMUSEMENT RIDE, SOUVENIR, AND FOOD AND BEVERAGE INDEPENDENT CONTRACTOR CONCESSIONS AGREEMENT WITH THE SAN ANTONIO ZOOLOGICAL SOCIETY, INC. FOR THE PERIOD ENDING MAY 9, 2023 FOR THE CONSIDERATION OF TWENTY PERCENT (20%) OF GROSS RECEIPTS AND A GUARANTEED MINIMUM ANNUAL PAYMENT OF \$120,000.00; AUTHORIZING THE ESTABLISHMENT OF A CAPITAL REPAIR AND IMPROVEMENT TRUST FUND; PROVIDING FOR REIMBURSEMENT TO SAN ANTONIO ZOOLOGICAL SOCIETY, INC. FOR EXPENDITURES AUTHORIZED ACCORDING TO THE TERMS OF THE MINIATURE TRAIN AMUSEMENT RIDE, SOUVENIR, AND FOOD AND BEVERAGE INDEPENDENT CONTRACTOR CONCESSIONS AGREEMENT.

\* \* \* \* \*

**WHEREAS**, the City of San Antonio currently has three (3) separate concession license agreements with the San Antonio Brackenridge Eagle, Inc. (doing business as Alamo Concession Supply Inc.) and Alamo Concession Supply Inc. (ACS) for concession services in Brackenridge Park as follows:

<u>Concession</u>	<u>Concessionaire</u>	<u>Expiration Date</u>
Miniature Train Ride	The Brackenridge Eagle, Inc.	June 7, 2001
Souvenir Sales	The Brackenridge Eagle, Inc.	June 7, 2001
Food & Beverage Sales	Alamo Concession Supply Inc.	June 30, 2002; and

**WHEREAS**, ACS has entered into a sales agreement with the San Antonio Zoological Society, Inc. (Zoo) for the Zoo's purchase of all of ACS's physical assets and inventory; and

**WHEREAS**, the Zoo has requested that the City authorize the assignment of the three (3) current concession license agreements with ACS for the miniature train, souvenir sales and food and beverage sales to the Zoo contingent upon the Zoo entering into a new single agreement for these three (3) concessions in Brackenridge Park that will update and replace the terms and conditions in the current agreements with ACS; and

**WHEREAS**, the City staff has developed a new Miniature Train Amusement Ride, Souvenir, and Food and Beverage Independent Contractor Concessions Agreement with the Zoo that provides for the Zoo to offer these concession services in consideration for their payment of twenty percent (20%) of gross receipts from the concessions, with a guaranteed minimum annual payment of \$120,000.00 and with said agreement to run concurrently with the Zoo's Lease Agreement with the City for the Zoo in Brackenridge Park, ending on May 9, 2023; and

**WHEREAS**, said agreement is in the best interest of the City of San Antonio; **NOW THEREFORE:**

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

**Section 1.** The following three (3) agreements are hereby authorized to be assigned to the San Antonio Zoological Society, Inc., under new terms and conditions as provided for in the Miniature Train Amusement Ride, Souvenir, and Food and Beverage Independent Contractor Concessions Agreement (hereinafter referred to as “Concessions Agreement”) attached hereto and incorporated herein for all purposes as Attachment I:

Concession: Miniature Train  
Concessionaire: San Antonio Brackenridge Eagle, Inc.  
Ordinance Authority: Ordinance No. 67373, passed and approved on June 23, 1988  
Expiration Date: June 7, 2001

Concession: Souvenir and Novelty Shop  
Concessionaire: San Antonio Brackenridge Eagle, Inc.  
Ordinance Authority: Ordinance No. 67375, passed and approved on June 23, 1988  
Expiration Date: June 7, 2001

Concession: Food and Beverage  
Concessionaire: Alamo Concession Supply Co., Inc.  
Ordinance Authority: Ordinance No. 54086, passed and approved on July 30, 1981  
Expiration Date: June 30, 2002

**Section 2.** The terms of the Concessions Agreement (Attachment I) are hereby approved. The Concessions Agreement shall supercede in all respects all terms and conditions of the previous three concession agreements identified above. The City Manager, or any Assistant City Manager or Assistant to the City Manager is hereby authorized to execute the Concessions Agreement with the San Antonio Zoological Society, Inc. to operate certain concessions located within Brackenridge Park for a period ending May 9, 2023.

**Section 3.** The City Finance Department is hereby authorized to establish a Brackenridge Park Concession Infrastructure Capital Repair and Improvements Trust Fund to be administered by the Department of Parks and Recreation as per the terms and conditions of the Concessions Agreement set out in Attachment I.

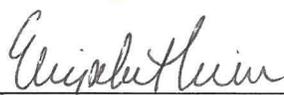
**Section 4.** The San Antonio Zoological Society, Inc. is hereby authorized to be reimbursed for City approved capital repair and improvements to the City’s Brackenridge Park concession infrastructure from the Brackenridge Park Concession Infrastructure Capital Repair and Improvements Fund as per the terms and conditions of the Concessions Agreement set out in Attachment I.

**Section 5.** This ordinance shall become effective on the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 15th day of February, 2001.

  
M A Y O R  
Howard W. Peak

ATTEST:   
ASSISTANT City Clerk

APPROVED AS TO FORM:   
City Attorney

01-07

MEETING OF THE CITY COUNCIL

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 27

DATE: FEB 15 2001

MOTION: Bannwolf Perez

ORDINANCE NUMBER: 93463

RESOLUTION NUMBER: \_\_\_\_\_

ZONING CASE NUMBER: \_\_\_\_\_

TRAVEL AUTHORIZATION: \_\_\_\_\_

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1		✓	
MARIO SALAS District 2		✓	
DEBRA GUERRERO District 3		✓	
RAUL PRADO District 4		✓	
DAVID A. GARCIA District 5		absent	
ENRIQUE BARRERA District 6		✓	
ED GARZA District 7		absent	
BONNIE CONNER District 8		✓	
TIM BANNWOLF District 9		✓	
DAVID CARPENTER District 10		✓	
HOWARD W. PEAK Mayor		✓	

**FILE** Cross Index  
 Phil Sheridan / Alamo  
 Corcoran, San Antonio  
 zoological society

**01-07**

**MINIATURE TRAIN AMUSEMENT RIDE  
SOUVENIR, AND FOOD AND BEVERAGE  
INDEPENDENT CONTRACTOR  
CONCESSIONS AGREEMENT**

**entered into between**

**CITY OF SAN ANTONIO**

**and the**

**SAN ANTONIO ZOOLOGICAL SOCIETY**

**MINIATURE TRAIN AMUSEMENT RIDE,  
SOUVENIR, AND FOOD AND BEVERAGE  
INDEPENDENT CONTRACTOR  
CONCESSIONS AGREEMENT**

This Contract is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as the "City"), acting by and through its City Manager; pursuant to Ordinance No. 93463 dated February 15, 2001, and the **San Antonio Zoological Society, Inc.** acting by and through its President, Dr. Mark Thornton (hereinafter referred to as the "Zoo"), for the operation of a Miniature Train Amusement Ride (hereinafter referred to as the "Train Concession"), food and beverage operations (hereinafter referred to as the "Food and Beverage Concession"), and souvenir concessions (hereinafter referred to as the "Souvenir Concession") located within Brackenridge Park, San Antonio, Texas.

**WITNESSETH:**

WHEREAS, the City owns Brackenridge Park for the use and enjoyment of the citizens of San Antonio; and,

WHEREAS, historically, Brackenridge Park has contained a variety of concession amusements operated by Alamo Concessions (the "Current Operator") including but not limited to the Train Concession, Souvenir Concession and Food and Beverage Concession located within Brackenridge Park; and,

WHEREAS, for many years the Zoo has successfully operated a zoological garden in Brackenridge Park turning this zoological garden into one of the premier such facilities in the country; and,

WHEREAS, the Current Operator has reached an agreement with the Zoo to sell all of its property relating to or used by the Current Operator in connection with the Train Concession, Souvenir Concession and Food and Beverage Concession, as well as other assets, to the Zoo and to assign, contingent upon City approval, all of its rights under various concession contracts to the Zoo; and

WHEREAS, the City now desires that the Zoo, being a proven and reliable operator of a very successful and complex operation located within Brackenridge Park now take over the operation of the Train Concession, Souvenir Concession and Food and Beverage Concession in Brackenridge Park under updated and strengthened terms and conditions;

NOW, THEREFORE, in consideration of mutual covenants, terms, conditions, promises and agreements contained herein, the City and the Zoo mutually agree to the following:

**1. DEFINITIONS**

1.1 "Business Day" shall mean every day of the week except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by the San Antonio City Council for the City of San Antonio employees.

1.2 "City" shall mean the City of San Antonio, A Texas Municipal Corporation.

1.3 "Concessions" shall mean collectively the (1) the Train Concession, (2) Food and Beverage Concession, and (3) Souvenir Concession.

1.4 "Contract" shall mean this agreement along with any written amendments thereto approved by the parties in accordance with the provisions hereof.

1.5 "Contract Year" shall mean, except as set out below for the first Contract Year, that twelve calendar month period beginning October 1 and ending September 30 during the term of this Contract. The above notwithstanding the first Contract Year shall begin on the later of (i) the date as of which this date this Contract is executed by the City and the Zoo, or (ii) ten (10) days after passage of an ordinance by the City Council of the City of San Antonio authorizing the execution of this Contract and continuing until the first September 30<sup>th</sup> thereafter.

1.6 "Director" shall mean the Director of the Department of Parks and Recreation for the City of San Antonio, Texas or his designee, however so designated.

1.7 "Discounted Package Sale" shall mean the package sale by the Zoo of (A) complementary or discounted sale of tickets to the Miniature Train Ride and/or food, beverage or souvenir items which would be included in Gross Receipts, where the customer received the discount for such items by purchasing a ticket to the Zoological Gardens and/or food, beverage or souvenirs from the Zoo which would not be included in Gross Receipts, or (B) complementary or discounted sales of tickets to the Zoological Garden and/or food, beverage or souvenir items not included in the Gross Receipts where the customer receives the discount for purchasing a ticket to the Miniature Train Ride and/or for purchasing souvenirs, food or beverage which would be included in Gross Receipts. Provided, however, the Zoo shall have no authority to make any Discounted Package Sales pursuant to the terms of a contract if the contract has a term of greater than 1 year without the prior written approval of the Director which approval shall not be unreasonably withheld. The Director will not be authorized to grant such approval until after he has received a written request from the Zoo. Such written request shall include the specific Discounted Package Sale intended to be offered, including the retail value of all items to be included in the Discounted Package Sale and the proposed pro rata division of the sales amount to be included in Gross Receipts under this Contract. All Discounted Package Sales shall be reported to the City in the Reports to be provided to the City under the terms of this Contract, which Reports shall set out the retail value of all items included in those Discounted Package Sales and the pro rata division of the sales amount to be included in Gross Receipts under this Contract. The above notwithstanding in the event, (i) the Zoo provides a Discounted Package Sale to persons within any of the groups listed on Exhibit "A" (who have historically been furnished free or complementary tickets to the Zoological Gardens as a part of promoting the educational or charitable purpose of the Zoological Gardens), and (ii) the Zoo elects to provide the Discounted Package Sale to such persons in lieu of such free or complementary ticket to the Zoological Gardens, then for the purpose of calculating the allocation of the Gross Receipts relating to the products and services included in such Discounted Package Sale as set out above, the retail value of the ticket to the Zoological Garden shall be deemed to be zero. In connection with a Discounted Package Sale, in the event sums are paid to the Zoo by a third party as an underwriting for either admission tickets for students to the Zoological Garden or tickets for students to ride the Miniature Train Ride, these sums shall be considered payment for such tickets a pro rata basis and shall not be considered [1] a contribution to the Zoo by the underwriting foundation and [2] a free ticket to either the Zoological Gardens or the Miniature Train Ride as the case may be.

1.8 "Food and Beverage Concession" shall mean the right and obligation to serve and or sell food and beverages in, on or from the Premises and related services. The Food and Beverage Concession shall include, but not necessarily be limited to, the storage, preparation, cooking, refrigeration, and distribution of all types of food for breakfast, brunch, lunch, dinner, and event-type (when applicable) meals, and alcoholic beverages (except for those facilities where consumption of alcoholic beverages are prohibited by valid and enforceable deed restriction or law) and non-alcoholic beverages.

1.9 "Gross Receipts" shall mean, except as set out below, the amount of cash, credit or the then fair market value of any other compensation from all sales made and services performed of every kind, name and nature under authority of this Contract, including all revenue received for sales of tickets for the

Miniature Train Ride and all other sales from the Premises, whether sold or performed by the Zoo, any subcontractor or agent of the Zoo, or any other person or entity making sales to the public or performing services under this Contract to the public with the Zoo's approval and whether orders for such sales are received at the Premises by mail, telephone, or internet orders, including but not limited to all sales of (i) gifts, novelties, souvenirs, and other similar goods in, on or from the Premises as a part of the Souvenir Concession, and food and beverages and other similar goods in, on or from the Premises as a part of the Food and Beverage Concession, and (ii) tickets for the Miniature Train Ride regardless from where the tickets are sold. Except as set out herein for ticket stock, the Zoo shall have no authority to accept any compensation other than cash or credit for sales made and services performed unless it has received written authorization from the Director. The authorization from the Director shall include a determination of the fair market value of such compensation, which such determination shall at all times be controlling for purposes of this Contract. For the purpose of determining the amount to be included in Gross Receipts from a Discounted Package Sale (as defined above) the Gross Receipts shall only include that portion of the sales proceeds which is allocable to the items described in (i) and (ii) above, on a basis which is pro rata to the then retail value of all items included in the Discounted Package Sale in the manner set out above. In addition, all payments made to the Zoo in connection with the operations of the Concessions (X) under any business loss or other similar insurance or bonding contract or agreement, all sums received relating to the Concessions, (Y) as payments in kind or otherwise for advertising on ticket stock relating thereto to the extent the sums received exceed the actual cost of the development, purchase and fabrication of the ticket stock, and (Z) as payments for advertising, sponsorships and exclusive contracts relating to the Concessions to the extent the sum received exceed the actual cost of the development, purchase and fabrication of the advertising, sponsorships and exclusive contracts shall be included in Gross Receipts. The above notwithstanding, the Gross Receipts shall not include or be construed to include any sums or value received by the Zoo (A) as sums received as sales tax or other taxes to be remitted by the Zoo or its subcontractors, agents or other in connection with sales hereunder, (B) as sums received for merchandise or services hereunder which are returned or charged back to the customer by the Zoo, (C) as sums received by the Zoo in connection with the sale of any capital assets, (D) as sums received as a contribution made to the Zoo (in this regard, in the event sums are paid to the Zoo by a third party as an underwriting for tickets to the Miniature Train Ride for students, these sums shall be considered payment for the train tickets on a pro rata basis and shall **not** be considered [1] a contribution to the Zoo by the underwriting foundation and [2] a free ticket to the Miniature Train Ride). In addition, as to free or complementary tickets to the Miniature Train Ride, the retail value of those tickets shall be including in the Gross Receipts except to the extent they are provided by the Zoo for the purpose of promoting the Concessions or the Concessions and the Zoo and do not exceed (X) on a per annum basis for each year beginning with the Effective Date of this Contract and continuing until October 1, 2002, 5% of the tickets to the Miniature Train Ride and (Y) on a per annum basis for each year from and after October 1, 2002 until the end of the term of this Contract, 3% of the tickets to the Miniature Train Ride. Any and all services, products and/or merchandise provided, sold, exchanged or bartered by subcontractor(s), sub-licensees, or any other person or entity within the Premises under authority of the Zoo shall be included in the Gross Receipts payments to the City at the same percentage required above as if such items were directly sold by the Zoo. The above notwithstanding (a) in the event of a sale of souvenirs or food and beverages from the Concessions in connection with which a discount has been provided based upon membership in the Zoo, and the membership discount provided is greater than 10%, the Gross Receipts shall be calculated for such sale with a discount of no greater than 10%, and (B) in the event of a sale of a ticket to for the Miniature Train Ride in which a discount has been provided based upon membership in the Zoo the Gross Receipts shall be calculated for such sale without a discount.

1.10 "Premises" shall mean that real property identified in Exhibit B.

1.11 "Miniature Train Ride" shall mean the train amusement ride which is operated through Brackenridge Park as a part of the Train Concession.

1.12 "Minimum Concession Fee" shall mean \$120,000.00 per annum, except as otherwise expressly set out herein.

1.13 "Brackenridge Park" shall mean Brackenridge Park and the contiguous park areas operated and maintained by the City of San Antonio.

1.14 "Parties" shall mean the City of San Antonio and the San Antonio Zoological Society, Inc.

1.15 "Sky Ride Amusement" shall have the same meaning as set out in Section 6.1.

1.16 "Souvenir Concession" shall mean the right and obligation to sell gifts, novelties, souvenirs, and other products and services in, on or from the Premises.

1.17 "Train Concession" shall mean the right and obligation to operate the Miniature Train Ride in Brackenridge Park with the track in place as it currently exists along with any future changes thereto and services related thereto. The Train Concession shall include, but not necessarily be limited to, rights to use the railroad tracks, outbuildings (e.g., ticket and storage "booths"), "Train Depot," Souvenir Store and all other property situated upon the Premises which the Zoo deems necessary or useful to operate the Train Concession, and the right to operate rolling stock (e.g., locomotive[s], passenger cars, etc.) on those areas.

1.18 "Working Day" shall mean each day of the week from 10:00 a.m. until 1½ hours prior to sun down, or such longer hours of operations as the Zoo may elect from time to time.

1.19 "Zoo" shall mean the San Antonio Zoological Society, Inc.

1.20 "Zoological Gardens" shall mean the San Antonio Zoological Gardens.

## **2. CONCESSION SERVICES PROVIDED**

2.1 The Zoo shall have the right and the obligation, as herein detailed, to operate the following Concessions in, on or from the Premises, pursuant to the provisions contained herein: (1) the Train Concession, (2) Food and Beverage Concession, and (3) Souvenir Concession.

2.2 In furtherance of the Zoo's right and obligation to operate these Concessions it is hereby granted the exclusive use of all the Premises including but not limited to the real property, and any improvements situated thereon as further described on Exhibit B and known by name as follows:

- Train Depot Snack Bar (along with adjacent patio with tables and seating)
- Tea Garden Snack Bar with ten foot strip of patio as indicated on attached Schedule (along with the non-exclusive use of the adjacent patio with tables and seating)
- Train Depot (incorporates both the Snack Bar and the Novelty/Souvenir sales and concession areas-previous contracts consistently refer to this all-inclusive building as the "Train Depot").
- Train "Stop" with Benches Pavilions
- Train Track
- Track Bed
- Track Bridges
- Track Crossings (streets)
- All Crossing Arms
- Train Barn and "Yard"
- Each of the Skyride Roundhouses located at the traffic circle and the Tea Garden
- The Tunnel Building

The Zoo agrees and specifically understands that (i) the rights granted under the terms of this Contract are confined to the Zoo's privilege to use the Premises and operate the Concessions as set out herein and (ii) the rights herein granted to the Zoo do not grant any ownership interest in the fee estate in

Brackenridge Park or the Premises but is a mere agreement to provide the privilege of use to conduct certain acts upon the Premises. Subject to the rights of the Zoo set out under the terms of this Contract, the City at all times retains dominion, possession, and control of said Premises, including access thereto. In addition, as to the Tea Garden Snack Bar, the Zoo shall be entitled to reserve the exclusive use of the adjacent patio with tables and seating, at a particular time and date, for no additional cost provided it has placed a reservation for the use of that area with the Director at a time when no third party has yet reserved the use of such area. Except as set out herein for the Skyride Roundhouses, the Zoo's usage of each individual location within the Premises shall be limited to those uses for which such locations have been used to provide the Concessions in the past unless the Director gives written authorization for additional uses.

2.3 Except as set out herein, the Concessions shall be provided by the Zoo, in accordance with the provisions hereof, to the general public and visitors to Brackenridge Park during each Working Day. The Zoo shall retain the right to refuse service to any person from time to time based upon reasonable rules and regulations that the Zoo may adopt in connection with its operation of the Concessions. The above notwithstanding, the Zoo retains the right to operate the Concessions before and after the hours established as a Working Day for private functions. The ability to book the use of the Concessions shall be available to the public.

2.4 All other terms and conditions of this Contract notwithstanding, the Zoo's use of each of the Sky-Ride Roundhouses shall be subject to the Zoo and the Director reaching agreement on a plan for the use of each such space. The Zoo hereby agrees to develop a plan for the use of each such Sky-Ride Roundhouse and submit its plan to the Director on or before that date which is 18 months from the date of this Contract (the "Proposed Plan"). The City shall review and either approve any such Proposed Plan or provide its specific objections to such plan within three (3) months after receipt of the Proposed Plan from the Zoo. The City hereby agrees that any objections raised by the City shall be those which are reasonable and approval of the Proposed Plan shall not be unreasonably withheld. In the event the City approves the Proposed Plan, the Zoo shall have the time period set out in the Plan to complete any required improvements and beginning operating any approved concessions from such Premises under whatever terms and conditions are agreed to in such approval. In the event the City objects to the Proposed Plan, the City and the Zoo shall thereafter endeavor to reach agreement on an acceptable use of such Sky-Ride Roundhouse by the Zoo. In the event the City and the Zoo are unable to reach agreement on a use within thirty six (36) months from the Effective Date of this Contract the Director may require that the Zoo remove the structures situated at either one of the two Sky Ride Roundhouses in which case the Zoo shall cause such structure to be removed, at its sole cost and expense as soon as reasonably possible thereafter. Until a Proposed Plan for a Sky- Ride Roundhouse has been approved by the City the Zoo shall have no obligation to operate any concession operations within such areas of the Premises but shall be obligated to keep and maintain such areas of the Premises in accordance with all maintenance provisions of this Contract.

2.5 The Tea Garden Snack Bar shall be operated by the Zoo only on a seasonal basis and only during times which the Zoo determines to be economically feasible as determined by the Zoo.

2.6 It is expressly understood and agreed that the Zoo is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and not an employee of the City. The Zoo shall not be entitled to or receive any benefits provided by the City to the City's employees.

2.7 The Zoo shall observe and comply with all City, state and federal laws, regulations, ordinances and codes affecting the Zoo's operations pursuant to this Contract.

2.8 The Zoo hereby agrees that it shall not offer any Discounted Package Sale which includes in that Discounted Package Sale a free ticket to the Zoo which is provided pursuant to a Zoo membership. Provided however, following the Effective Date of this Contract the Zoo and the City shall consider the

approval of combined membership sales which may include the Zoo and the Train Concession and/or other non profit venues such as the Botanical Garden and the Witte Museum, on terms which are mutually agreed to by the Zoo and the City, as evidenced by passage of an appropriate ordinance by the City Council of the City of San Antonio, and any other such venues, if applicable.

### **3. DEFAULTS, TERMINATION AND REMEDIES**

3.1 The following events shall be deemed to be event of default by the Zoo (an "Event of Default") under the terms of this Contract:

3.1.1 The Zoo fails to timely pay the Concession Fees due the City as provided for in this Contract and any such failure continues for a period of ten (10) days following receipt of written notice by the Director.

3.1.2. The Zoo fails to (i) comply in any material respect with the insurance requirements provided for in this Contract or (ii) violates any rule, regulation or law to which the Zoo is bound under the terms of this Contract, and such failure or violation shall continue for a period of ten (10) days after being notified in writing by the Director, or his designee, of such failure or violation. The above notwithstanding, in the event the Zoo is using due diligence to address any such violation or deficiency and it is not reasonably capable of being resolved in 10 days, a default shall not arise so long as the Zoo is diligently pursuing a cure of such violation or deficiency and causes such deficiency to be cured as soon as reasonably practical, provided, however, in the event that the Zoo shall require such extra time to cure such deficiency the Zoo shall give written notice to the City of the reasons for the delay and a time schedule for completely curing such deficiency.

3.1.3 The Zoo fails to fulfill in a timely, proper and satisfactory manner its responsibilities under this Contract, or the Zoo shall violate any of the covenants or agreements of this Contract in any material respect other than those set out in 3.1.1 and 3.1.2 above, and such failure or violation shall continue for a period of thirty (30) days after being notified in writing by the Director, or his designee, of such failure or violation. The above notwithstanding, in the event the Zoo is using due diligence to address such deficiency and it is not reasonably capable of being resolved in 30 days a default shall not arise so long as the Zoo is diligently pursuing a cure of such deficiency and causes such deficiency to be cured as soon as reasonably practical, provided, however, in the event that the Zoo shall require such extra time to cure such deficiency the Zoo shall give written notice to the City of the reasons for the delay and a time schedule for completely curing such deficiency.

3.2 Upon the occurrence of an Event of Default, the City has the right, at its option, to declare this Contract, and all rights and interests created by it, terminated. Upon the City electing to so terminate this Contract, it shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. In the alternative the City, its agents or attorneys have the right, at their option, to resume possession of the Premises as applicable and operate the Concessions in accordance with the terms of this Contract without relieving the Zoo of any obligation hereunder related to Concession Fees still due and owing in this Contract, or any extension thereof.

3.3 Upon receipt of notice to terminate, the Zoo shall cancel, withdraw or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this Contract. To this effect, City shall not be liable to the Zoo or the Zoo's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

3.4 Any termination of this Contract as herein provided, does not relieve the Zoo from the payment of any sum or sums that are then due and payable to the City hereunder, or except as otherwise set out herein, (i) any claim for damages then or theretofore accruing against the Zoo hereunder, except to the

extent they have been satisfied from the City's operation of the Concessions, as set out above, or (ii) any such sum or sums or claim for damages by any remedy provided for by law, or (iii) prevent the City from recovering damages from the Zoo for any default thereunder.

3.5 Upon expiration or termination of this Contract, the Zoo shall quit and peacefully relinquish control of the Premises to the City, and the City, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Premises and possess itself thereof, by force, summary proceedings, ejectment or otherwise, and may without liability or obligation remove the Zoo and all other persons and property, including all signs, furniture, trade fixtures, and other personal property which may be disputed as to its status as fixtures, from the Premises.

3.6 Upon termination of this Contract in the manner set forth above, the Zoo shall promptly remove all personal property of the Zoo from the Premises. If any property placed by the Zoo upon the Premises is not removed by the Zoo within thirty (30) days after expiration or termination of this Contract, then the City may remove same without further notice, or liability or obligation therefor and may dispose of same in any manner the City so chooses. The Zoo shall be liable to the City for any expense the City encounters in such removal and proper disposal.

3.7 At the option of the City, the Zoo shall promptly remove any fixture identified by the City for removal upon expiration or termination of this Contract. If the Zoo fails to remove any such fixtures within a reasonable time period identified by Director, which shall, at a minimum, be thirty (30) days, the City shall have the right to remove such property and the Zoo shall be liable to the City for all expenses encountered by the City in such removal.

3.8 All rights, options and remedies of the City contained in this Contract shall be cumulative 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 available at law or in equity, whether or not stated in this Contract. No waiver by the City of a breach of any of the covenants, conditions or restrictions of this Contract 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.

3.9 The following events shall be deemed to be events of default by the City under this Contract: The City shall fail to fulfill in a timely, proper and satisfactory manner its responsibilities under this Contract, or the City shall violate any of the covenants or agreements of this Contract in any material respect and such failure or violation shall continue for a period of thirty (30) days after being notified in writing by the Zoo, of such failure or violation. The above notwithstanding, in the event the City is using due diligence to address such deficiency and it is not reasonably capable of being resolved in 30 days a default shall not arise so long as the City is diligently pursuing a cure of such deficiency and causes such deficiency to be cured as soon as reasonably practical, provided, however, in the event that the City shall require such extra time to cure such deficiency the City shall give written notice to the Zoo of the reasons for the delay and an time schedule for completely curing such deficiency. All rights, options and remedies of the Zoo contained in this Contract shall be cumulative of the other, and the Zoo shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Contract. No waiver by the Zoo of a breach of any of the covenants, conditions or restrictions of this Contract 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.

3.10 All of the above notwithstanding, in no event shall the City or the Zoo be liable for any consequential or exemplary damages in connection herewith.

#### 4. TERM OF CONTRACT

4.1 Except as otherwise provided for herein, this Contract shall begin immediately upon its execution by the City and the Zoo and shall terminate **May 9, 2023**. Any holding over by the Zoo with consent of City

whether written or implied shall constitute month-to-month concession agreement and either party shall have a right to terminate such agreement with thirty days written notice to the other party.

4.2 In the event that the Zoo, with the consent of the City, holds over and remains in possession of any of the Premises after the expiration of this Contract, such holding over shall not be deemed to operate as a renewal or extension of this Contract but shall only create a month-to-month Contract on the same terms, conditions and covenants, including compensation to the City contained in this Contract for the original term except that such holdover arrangement shall be terminable by either party by giving thirty (30) days written notice to the other party.

## 5. COMPENSATION TO THE CITY

5.1 As compensation for the concession rights granted to the Zoo herein, the Zoo agrees to pay to the City, in accordance with paragraph 5.2 hereof, throughout the term of this Contract for each Contract Year a Concession Fee equal to the greater of \$120,000.00 (the "Minimum Concession Fee") or Twenty percent (20%) of Gross Receipts for such Contract Year, provided, however, to the extent the sum of 20% of the Gross Receipts during a Contract Year exceeds the Capital Reserve Cut-Over (as set out below) applicable to that Contract Year (such excess sums hereinafter referred to as the "Excess Fees") that sum equal to the Excess Fees shall be held by the City in a separate "Capital Reserve Account" to be held by the City in trust for the benefit of the Concessions under the terms of this Contract for the sole purpose of carrying out capital repairs and capital improvements to the Premises. All sums obtained by the City to be deposited into the Capital Reserve Account and all interest earned upon such account shall be retained in the account and shall become a part of the funds to be held in such account which shall be held only for the purposes set out in this Contract. In the event the Zoo desires to conduct a capital repair or capital improvement to the Premises it shall have the right to seek reimburse for all of the costs incurred by the Zoo by submitting a request for reimbursement to the Director with a copy of its bid for such costs. The City shall provide the Zoo with reimbursement for such capital repairs and capital improvements upon request but subject to the approval of the Director which approval will not be unreasonably withheld or delayed. In the event a request for reimbursement is to be made from the Capital Reserve Account and the sums to be reimbursed exceed the sums then on deposit in the Capital Reserve Account at the time of the request, any deficiency shall be paid out of the Capital Reserve Account as future sums are made available to the City under the terms of this Contract for deposit into the Capital Reserve Account. The above notwithstanding, in the event the request for reimbursement certifies to the City that it is for a capital repair or capital improvement which will allow the Zoo to remain in compliance with this Agreement, or are equal to or less than \$15,000.00, no such approval of the Director shall be required for the Zoo to obtain such reimbursement. In the event any interest is earned on the sums on deposit in the Capital Reserve Account, the interest shall be retained in that account and become a part of the funds available in that Capital Reserve Account to be used in the manner set out herein. In the event funds remain in the Capital Reserve Account at the end of the term of this Contract, the proceeds within the Capital Reserve Account shall be delivered to the City out of trust along with the permanent structures then situated upon the Premises. The City and Zoo do hereby agree that one half (1/2) of the net cost to remove the Sky-Ride Amusement in the manner set out below (or the payment of the obligation to the City to reimburse the City for its expenses as set out below) shall be deemed "capital repair and improvements to the Premises" approved by the Director and the Zoo shall be authorized to be reimbursed from the Capital Reserve Account to reimburse the Zoo for such expenses.

The Capital Reserve Cut-Over for each Contract Year shall be as follows:

Contract Years 1-5	\$140,000.00
Contract Years 6-10	\$160,000.00
Contract Years 11-15	\$180,000.00
Contract Years 16 and above	\$200,000.00

The above notwithstanding (i) until the earlier of that date which is six (6) months from the Effective Date of this Contract or the date the Train Concession becomes commercially operational and open to the public, the Minimum Concession Fee shall be \$0, and (ii) in the event the first Contract Year is less than a full 12 month period, the Minimum Concession Fee per annum and the Capital Reserve Cut-Over for that Contract Year, which have been stated in annual terms, shall be pro rated for any such partial year. The Zoo shall give the Director written notice of the day on which the Train becomes commercially operational and open to the public, which day shall not be later than six (6) months from the effective date of this Contract.

5.2 The Zoo shall pay the Concession Fees to the City for each Contract Year in monthly installments equal to the lesser of (i) Twenty Percent (20%) of Gross Receipts received by the Zoo for the preceding month, or (ii) that amount which is equal to one twelfth (1/12<sup>th</sup>) of the Minimum Concession Fee, with payments to be made no later than the tenth (10<sup>th</sup>) Business Day of each month during the term of this Contract (the "Monthly Payments"). Within ninety (90) days following the end of each Contract Year the Zoo shall determine if the Monthly Payments made during a Contract Year have been sufficient to satisfy the Zoo's Concession Fee obligation for that Contract Year and make a report to the City in the manner set out below (the "Annual Gross Receipts Report"). To the extent the total sum of the Monthly Payments for that Contract Year are less than that amount necessary to satisfy such obligation (the "Contract Fee Deficiency") the Zoo shall pay a sum equal to the Contract Fee Deficiency to the City within the same ninety (90) day time limit that Contact Year's Annual Gross Receipts Report is due to be made to the City, along with the delivery of the Annual Gross Receipts Report (the "Reconciliation Payment").

5.3 The Zoo shall make aforesaid payments to City no later than the tenth (10<sup>th</sup>) Business Day of each month for the preceding calendar month. Said payments shall be submitted to:

City of San Antonio  
Finance Department, Treasury Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

5.4 Accompanying the Monthly Payments to the City shall be a Gross Receipts Report prepared by the Zoo in form and content reasonably acceptable to City, reflecting all sales and other data relating to the Monthly Payment. The purpose of said Gross Receipts Report which accompanies each Monthly Payment shall be to provide the City with the basis for the computation of the Zoo's Monthly Payment to the City. These Gross Receipts Reports shall set out the Gross Receipts from each Concession as well as a separate statement for each Concession relating to any Discounted Package Sales for the period to which the payment relates. Such Gross Receipts Report shall also contain at a minimum the following: 1) the total number of tickets sold, bartered, exchanged or given away for the Train Concession, listed by category and price of ticket for such period; 2) that information relating to the sales, exchanges or bartering of food, beverages, gifts, souvenirs, and other similar products which is readily available from the Zoo's POS System, and 3) the calculation of the payment due to the City according to such report. Any and all services, products and/or merchandise provided by subcontractor(s), sub-licensees, or any other person or entity within the Premises which are required to be included in Gross Receipts shall be

included in the Monthly Payments and the monthly Gross Receipts Report to the City as required above, as if such items were directly sold by the Zoo.

5.5 The City does hereby acknowledge that, as to any existing sponsorship/exclusive contracts, the Zoo obtained such contract based upon the operations of the Zoological Gardens without consideration of the Concessions, accordingly, no portion of the consideration relating to the present terms of the existing sponsorship/exclusive contracts for the Zoological Gardens will be attributable to the Concessions. At such time as new sponsorship/exclusive contracts are put in place by the Zoo for the Zoological Gardens the Zoo will request from the vendor that (i) those contracts include the Concessions, and (ii) any additional premium consideration received by the Zoo from the vendor which is attributable to the inclusion of the Concessions shall be (A) separately stated in the contract and (B) included in the Gross Receipts as and when received by the Zoo.

## 6. SKY-RIDE, FUEL AND STORAGE TANK

6.1 Not later than two (2) years from the Effective Date of this Contract the Zoo agrees, at no cost to the City, to cause to be removed from Brackenridge Park, and to cause to be disposed of properly, the equipment which has in the past been used in the operation of the sky-ride amusement (the "Sky-Ride Amusement"). In connection with such removal the Zoo shall, except as set out below, be entitled to retain any sums received for the salvage value of such equipment. The above notwithstanding, in no event shall the Zoo be required to remove either the concrete or cement footings for the towers supporting the Sky-Ride Amusement or the Skyride "Roundhouses"- (one at the traffic circle and one in the Tea Garden), provided, however, such Roundhouses shall be cleaned out of all equipment pertaining to the Sky-Ride Amusement. Such removal shall be accomplished in a manner which takes into account the remaining property rights, if any, of the previous operator of the sky-ride amusement concession, and the Zoo will hold harmless and indemnify the City from 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 from any person making a claim based on the removal of the Sky-Ride Amusement. The Zoo shall hire only competent, qualified contractors, experienced in the removal of such Skyrides or equipment of similar nature and character, and shall require that such contractors name the City as an additional insured on any insurance or bonding provided by such contractors.

6.2 In the event the Zoo shall fail to cause the Sky-Ride Amusement to be removed in the manner set out in paragraph 6.1 hereof within the two (2) year period, the City shall have the right, as its sole remedy, to cause the Sky-Ride Amusement to be removed from Brackenridge Park in the manner set out above and the Zoo shall be obligated to reimburse the City for its actual costs incurred to remove the Sky-Ride Amusement up to \$50,000.00, which sums shall be paid thirty (30) days following the date the City provides the Zoo notice it has incurred such costs. At such time as the Zoo pays any such sums to the City, the Zoo may reimburse itself out of the Capital Reserve Account for ½ of such sums, but only to the extent of the sums then on deposit in such account, and no future sums to be deposited into that account shall be used for that purpose. In the event the City shall be required to remove the Sky-Ride Amusement in the manner set out above following such two (2) year period, the City shall be entitled to retain any sums received for the salvage value of the equipment it removes. In addition, in the event the third party costs paid by the City to remove the Sky Ride exceeds \$50,000.00 the City shall be entitled to be reimbursed for up to ½ of its third party removal costs out of the Capital Reserve Account as such sums become available within such Capital Reserve Account (but after the reimbursement to the Zoo as set out above), provided that the sum of such reimbursement, when combined with the \$50,000.00 payment shall not exceed 100% of such third party costs.

6.3 The City has caused to be removed from Brackenridge Park the underground storage tank used in connection with the Train Concession in the manner described in Texas Natural Resource Conservation Commission ("TNRCC") facility ID# 0034753.

6.4 The Zoo shall be allowed to install one or more bullet-proof above ground fuel storage tanks for its use in operating the Train Concession which may be used for either liquid or alternative fuels provided that they comply with all applicable federal, state, and local laws in such installation and use and provided further that it shall receive all necessary authorizations from all applicable legal authorities including TNRCC and the Fire Marshal. The placement of the new fuel storage tanks shall be at that location upon the Premises proposed by the Zoo and approved by the Director which such approval, or disapproval shall be made within twenty (20) days following the request by the Zoo for the placement of such tank and which approval shall not be unreasonably withheld. In addition, until such time as the bullet-proof above ground fuel storage tanks are approved and installed the Zoo shall be authorized to fuel the Miniature Train Ride with fuel delivered upon the Premises and provided by a fuel truck, provided the Zoo first complies with all applicable federal, state, and local laws and the Fire Marshal. The City shall cooperate with the Zoo in its efforts to obtain any of the approvals provided in this Section 6.4.

## 7. CONCESSION OPERATIONS

7.1 The Zoo agrees to operate the Concessions during the times set out for each Working Day three hundred and sixty- five days a year, every year of the term, without cessation except for the following reasons:

- a) inclement weather making such operation a hazard or reasonably impractical;
- b) reasonable and necessary maintenance directly related to the concessions operations set forth herein or for public safety reasons; provided, however, that those Concessions not directly affected by such maintenance shall continue to be operated by the Zoo;
- c) upon request from the Zoo with written approval from the Director (the "Approved Cessation").
- d) The parties hereto acknowledge and agree that at the time of execution of this Contract maintenance problems and licensing problems prevent the operation of the Miniature Train Ride which must be resolved prior to the beginning of normal operations by the Zoo. The Zoo shall not be obligated to operate the Miniature Train Ride until these operational and licensing problems are resolved to the satisfaction of the Zoo and in a manner which allows the Zoo to operate the Miniature Train Ride in accordance with the terms of this Contract provided however, the Zoo hereby agrees that it shall resolve all such problems and cause the Miniature Train Ride to become commercially operational and open to the public no later than six (6) months from the Effective Date of this Contract.
- e) The parties hereto acknowledge and agree that, in addition to the work to be done on the Miniature Train Ride, at the time of execution of this Contract certain minor repairs, modifications and cleaning will need to take place within the other Concessions prior to the beginning of normal operations by the Zoo. The Zoo shall not be obligated to operate the Concessions until these modifications, repairs and cleaning have been carried out by the Zoo, provided however, the Zoo hereby agrees that it shall carry out such modifications, repairs and cleaning no later than four (4) weeks from the later of (i) the Effective Date of this Contract, or (ii) the date it receives all permits required to do so.
- f) The Zoo shall be obligated to operate the Tea Garden Snack Bar only on a seasonal basis without violating this Contract and at times determined by the Zoo to be economically practical.
- g) The Skyride Roundhouses shall be required to be operated only after they have been placed in service pursuant to the plan therefor as approved by the City as described herein.

7.2 Except as set out above, the Zoo shall operate each Concession during those hours of operations which constitute a Working Day and which it otherwise determines to be appropriate, in its reasonable discretion, but in no case shall such hours be less than the time period described herein as a Working Day, that is; the period from 10:00am to that time which is 1 ½ hours prior to sunset.

7.3 The Zoo shall install, at its sole cost and expense, and utilize a "point of sale" (POS) software accounting system to handle all transactions authorized under this Contract, including ticket sales, complimentary tickets, discounted tickets, exchanges or barter, novelty/souvenir and food and beverage transactions (including sales, exchanges and barter) at each ticket "booth" and/or depot(s) and concession stands. Such system shall correctly and accurately measure, account for and document all Gross Receipts each year, and be capable of generating monthly, quarterly and annual financial reports of all Gross Receipts generated each year. If and when the technology is available to allow the City to access the Zoo's POS system on a view only basis, the Zoo agrees to cooperate with the City to install such view only technology, provided that the installation of the view only feature is at no cost or only nominal cost to the Zoo and will cause no disruption to the Zoo's use or operation of its POS system other than ordinary momentary delays in computer processing. The POS system shall be used by any subcontractor(s), sub-licensees, or any other person or entity within the Premises under authority of the Zoo conducting concession business authorized by this Contract.

7.4 The Zoo shall operate the Train Concession within the confines of the Premises. Any change in the alignment of the train tracks for the Train Concession, other than minor adjustments made only for the purposes of increasing the safety of the Train Concession, must be approved by City Council by passage of an appropriate ordinance prior to implementation. The Zoo shall maintain all of the following train stops: (1) the Witte Museum stop at Ave. B and Tuleta; (2) the stop on Mulberry at the Polo Fields driving range; (3) the stop on N. St. Mary's St. at the Japanese Tea Garden (4) the Main Depot.

7.5 Prior to beginning the operation of the Train Concession, the Zoo agrees to provide at least one train passenger car that meets or exceeds 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.

7.6 The Zoo's rules of operation for the Train Concession shall provide that the Miniature Train Ride will be loaded or unloaded only when the Miniature Train Ride is at a complete stop.

7.7 The Zoo shall supply and maintain, at its own expense (i) any necessary and incidental kitchen and dining room appliances, trade fixtures, equipment and/or paraphernalia reasonably necessary to operate the Food and Beverage Concession, including, but not necessarily limited to, chairs and tables and (ii) train engines and cars and related equipment and trade fixture to operate the Train Concession. All such property provided by the Zoo shall remain the property of the Zoo and may be removed by the Zoo at termination of this Contract.

7.8 All permanent structures currently on the Premises are property of the City. Any new permanent structures or permanent modifications to permanent structures placed upon the Premises by the Zoo shall become property of the City upon termination of the Contract. Permanent structures shall include, but are not limited to: Train Depots, Concession Stands, foundation-based Ticket Booths, Train Barn (Garage), and all laid track and crossing arms.

7.9 All items sold and distributed by the Zoo shall be rendered in a business-like manner. The Zoo does not by this Contract have the right to sell any items with the City logo, or any other intellectual property rights of the City.

7.10 Upon request of the Director, once per Contract Year the Zoo shall submit to the Director, a general list of items sold or otherwise used or distributed in connection with the operations of the Food and Beverage Concession. The Director reserves the right to make suggestions to the Zoo as to modifications to the items sold or otherwise used or distributed in connection with the operations of the Food and Beverage Concession. The Zoo shall consider (but shall not be bound by) any such suggestions in connection with its operations of those Concessions. The Director reserves the right to prohibit the sale of merchandise if, based upon reasonable discretion it determines that the merchandise is (i) not of the nature of products or concessions appropriate to be sold in a zoological garden, and (ii) is offensive and inappropriate for sale to the public.

7.11 The initial prices for tickets relating to the Train Concession shall be as listed in Exhibit C. The Zoo shall have the right to increase the cost of the ticket to the Train Concession by up to twenty percent (20%) in any three year period without authorization from City Council. All prices for items sold in connection with the Food and Beverage Concession which are identical to those sold in the Zoo Gardens shall be sold for a price which is the same as that price charged for those products within the Zoological Gardens. In the event items are sold in connection with the Food and Beverage Concession for which there are no identical products sold within the Zoological Gardens, these products shall be sold at a price no more than 10% higher than the highest price charged for similar items sold at stores within a one mile radius of Brackenridge Park.

## 8. PUBLIC SAFETY

8.1 The parties hereto acknowledge and agree that the Miniature Train Ride meets the definition of a "Class B Amusement Ride," under the Amusement Ride Safety Inspection and Insurance Act, codified as chapter 2151 of the Texas Occupation Code ("The Amusement Ride Safety Act"), and operation of such requires safety inspection certification that complies with the standards established by the American Society of Testing and Materials (ASTM) as of May 1, 1999. The Zoo agrees to operate and maintain the Miniature Train Ride in compliance with The Amusement Ride Safety Act. To the extent required by The Amusement Ride Safety Act the Zoo shall:

(a) Secure Commercial General Liability (CGL) insurance with "split-limits" of at least \$1,000,000 per occurrence for bodily injury. Insurance must be provided by an insurer that is rated an A- or better by A.M. Best.

(b) Display Public Information Signage that directs the public to a specific person and location on site to report unsafe ride conditions or operator violations of the law. The sign must be a minimum of twenty (20) inches in width and thirty (30) inches in length and must be in at least 50-point, all capital block letters, bold-faced red-on-white-background type and readable from a distance of 25 feet. The sign must be printed in both English and Spanish and posted at the principal entrance(s) to the amusement ride site or at where the tickets are sold for the Train Concession. In this regard, these signs are hereby approved by the City.

(c) Secure annual "Sticker of Compliance" issued by the Texas Department of Insurance and affix to the Miniature Train Ride or its ticket booth.

(d) Furnish all required quarterly and annual Inspection Reports (AR-100) and governmental and/or injury reports, as required by the Texas Department of Insurance, to the Department of Parks and Recreation, Contract Services Division, a copy of which shall be provided to the City upon request.

8.2 As provided for in The Amusement Ride Safety Act, the City reserves the right to direct a Texas state-certified peace officer to stop operation of the Train Concession when circumstances lead a party or parties to reasonably believe that unsafe conditions regarding the Train Concession and/or the Train Concession operator exist. In such event this shall be an Approved Cessation.

8.3 The City and the Zoo hereby agree that in the event operations of the Miniature Train Ride is required to be shut down due to safety reasons each of such parties shall use their best efforts to contact the San Antonio Park Rangers dispatch to report such incident as soon as possible thereafter. The phone number for Park Ranger dispatch is at present 207-8590 or 911.

8.4 The City also reserves the right to engage a third-party licensed inspector to provide an independent safety inspection and report to the City when the Miniature Train Ride has been halted for safety and/or ride failure reasons.

8.5 In instances where the Miniature Train Ride operation has been suspended for safety and/or ride failure reasons and the City's risk management office has not approved resumption of operations, the Miniature Train Ride operation will not be approved to resume service until City has received a satisfactory inspection report from the third-party inspector and verification of receipt of the new AR-100 by the Texas Department of Insurance. In such event, the Zoo's failure to operate the Miniature Train Ride shall be an Approved Cessation and deemed authorized. The City shall not unreasonably delay the resumption of service and the Zoo shall use reasonable commercial efforts to address any such safety issues and to cause the Miniature Train Ride operation to become operational as soon as possible thereafter.

8.6 All train conductors, operators or any other persons involved in the operation of the Train Ride who operate the Miniature Train Ride with the public on board shall be certified by the National Association of Amusement Ride Safety Officials (NAARSO), level one. All train conductors, operators or any other persons involved in the operation of the Miniature Train Ride who operate the Miniature Train Ride while the public is not on board shall be properly trained by the Zoo as to the operations of the Miniature Train Ride but shall not be required to be certified by the National Association of Amusement Ride Safety Officials (NAARSO).

8.7 Prior to beginning operations of the concessions described herein the Zoo shall submit a copy of its "Drug-Free Workplace" plan to City. The Zoo further agrees such plan shall, at a minimum, throughout the term of this Contract provide for the drug and alcohol testing of any new employees involved in the operation of the Miniature Train Ride, as well as subsequent random follow-up drug and alcohol testing on all such employees on a schedule approved by the Director to the extent the Zoo may legally do so, but not otherwise.

## **9. IMPROVEMENTS BY THE ZOO**

9.1 The Zoo shall not construct, or allow to be constructed (i) any permanent improvements or (ii) non permanent improvements of a material nature, to the Premises or allow to be made any permanent alterations to the structures on the Premises without the prior written approval of (A) the City through the Director and, (B) to the extent required by law, any necessary departments, boards or commissions of the City of San Antonio, including, but not limited to, the Historic and Design Review Commission. All costs and expenses of such approved physical construction, improvements or alterations to the Premises initiated by the Zoo, as well as all required permits and licenses for such construction, shall be at the Zoo's sole cost and expense. The above notwithstanding, in the event the Zoo is required to make any such permanent improvements or alterations to the Premises to comply with the terms of this Contract, no prior approval of the City through the Director shall be necessary and the improvements shall be deemed approved by the Director.

9.2 All improvements made on the Premises and/or alterations to permanent structures situated upon the Premises made by the Zoo shall become the property of City upon the end of the term of this Contract.

9.3 The City shall not be responsible or liable for, and the Zoo 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.

9.4 The Zoo has had full opportunity to examine the Premises. The Zoo's use of the Premises for the purposes authorized herein shall be conclusive evidence of its acceptance thereof in good order and satisfactory condition (excepting and excluding any existing environmental conditions), and the Zoo hereby accepts the Premises in its present condition as suitable for the purposes for which this Contract prescribes.

9.5 The Zoo agrees that no representations respecting the condition of the Premises, and no promises to construct, reconstruct, alter, repair or improve same, either before or after the execution

hereof, have been made by the City or its agents to the Zoo unless the same are contained herein or made a part hereof by specific reference herein.

9.6 All other terms and conditions of this Contract notwithstanding, in no event shall the Zoo be responsible for any existing environmental conditions upon the Premises which exist as of the date of this Contract or which may arise due to acts which occurred prior to the date of this Contract. In this regard, the Zoo understands that the City is not making any representation to the Zoo as to the status of the Premises from an environmental standpoint. The Zoo and the City each hereby agree that it will not sue or make any claim against the other for any injury or damage that results or may result from or as a consequence of, such environmental conditions; however, to the extent the Zoo is prohibited from operating all or any portion of the Concessions due to such circumstances, the Zoo's inability to perform shall be an Approved Cessation under the terms of this Contract.

## **10. THE CONCESSION SIGNS**

10.1 Within one year from the date the Train Concession is open to the public, in accordance with Section 7.1 hereof, the Zoo agrees to (i) develop and propose to the City a comprehensive signage plan for the Concessions, including a plan for placing the names of persons who are donors to the Zoo on or about the Concessions for the purposes of honoring donations which have benefited the Concessions, and (ii) upon approval from the City as to such plans, install the signage as set out in the plan. Signage for the Concessions authorized under this Contract shall not be installed without first receiving the written approval of the Director, which approval shall not be unreasonably withheld. All such signage shall conform to all applicable laws including municipal ordinances, and, in addition to the Director's approval, shall receive the approval of any applicable boards and commissions. Along with such signage design, the Zoo shall present a plan for directing all pedestrian traffic through and among its Concessions in the Park to the Director for his approval. Such plan shall include policies for minimizing the conflicts between vehicular and pedestrian traffic as well as a plan for parking lot utilization for cars as well as buses.

## **11. UTILITY AND MAINTENANCE RESPONSIBILITIES**

11.1 Other than routine maintenance, prior to beginning any maintenance or repairs of the Train Concessions over park roads or streets the Zoo shall present its plans for such maintenance or repairs to the Director for his approval, which approval shall not be unreasonably withheld or delayed. Director shall have the right to inspect such repairs and require changes to ensure the roadways and streets are open, safe and convenient for public use. In the event the Train Concession cannot be operated during the time of such repair and review process, the failure to operate shall be an Approved Cessation and deemed approved by the Director. The City agrees to coordinate with the Zoo any road work it may undertake which will affect the Train Concession and in connection therewith will not damage the railroad track used in connection with Train Concession.

11.2 The Zoo 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). The Zoo 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 the Zoo occupying and utilizing the Premises. In connection therewith the Parks Department will coordinate with the Zoo 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. The Zoo shall comply with all applicable laws of the Texas Alcoholic Beverage Code and all applicable rules and regulations promulgated thereunder. Except as set out below, relating to the areas adjacent to the train track for the Miniature Train Ride, the Zoo also assumes any and all responsibility for the day-to-day cleaning of the Premises. The Zoo 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.

11.3 If the Zoo is in default of its maintenance obligations set out above, then the City may, but is not obligated to, make or cause such repairs or maintenance to be made and shall not be responsible to the Zoo for any loss or damage that may accrue to the Zoo's "business" revenue or operations by reason thereof. If the City makes or causes such repairs or maintenance to be made, the Zoo agrees that it will on demand, pay to the City the reasonable and necessary cost thereof, and if the Zoo shall default in such payment, City shall have the remedies provided elsewhere herein for default of indebtedness, costs, or charges due by the Zoo to the City.

11.4 The Zoo shall provide for and pay directly to the utility companies, all utility company connection charges, including, but not limited to, the cost of installing separate electric and water meters, telephone lines and connections and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone or any other utility services, used in or on the Premises. The Zoo shall also furnish and install and maintain in good working order all electric light bulbs, tubes and ballasts. City shall not be liable to the Zoo in 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. However, any such interruption shall be deemed to be an Approved Cessation of operations approved by the Director.

11.5 The City, the Director and/or his designee shall have access to the Premises during its regular business hours of operation, and at any time in the event of an emergency, for the purpose of inspecting the conditions of the Miniature Train Ride and the Premises when deemed by City to be applicable and necessary. To this end, the Zoo agrees that it will cooperate with City in such a way so as not to obstruct or delay City in its inspections and that it will designate one of its staff to coordinate the inspection process, if requested by City.

## **12. FIRE AND OTHER DAMAGE.**

12.1 In the event all or a portion of the Premises are damaged by fire or other casualty, and the Zoo determines that the damage is so extensive that repair or rebuilding is not feasible, the Zoo shall notify the City and this Contract shall terminate immediately as to that portion of the Premises. In such event the proceeds from any fire casualty insurance relating to that portion of the Premises shall be paid to the City and Zoo in proportion to their respective ownership of the property lost in that casualty.

12.2 In the event the Premises or any portion of the Premises are damaged by fire or other casualty, and the Zoo determines that the damage is either (i) not extensive as described in 12.1, above or (ii) is extensive but the Zoo elects to rebuild that portion of the Premises damaged by a casualty loss in any case, the Zoo shall notify the City within sixty (60) days following the casualty. Thereafter the Zoo shall proceed to rebuild the portion of the Premises so damaged as soon as reasonably possible thereafter to a condition which is at least as good as the condition of that portion of the Premises immediately prior to the casualty. In the event the Zoo elects to rebuild that portion of the Premises which has been damaged by the casualty loss, the Zoo shall be entitled to use all portions of the property/casualty insurance proceeds

to pay for such costs. The Zoo's performance due hereunder shall abate in such proportion as that part of the Premises thus destroyed or rendered unusable until it has be rebuilt.

12.3 In the event the Premises are partially damaged by fire or other casualty, the Zoo's performance hereunder shall abate in such proportion as that part of the Premises which was destroyed or rendered unusable. However, if the Premises shall be so slightly injured by any such casualty as not to be rendered unfit for use, the performance required hereunder shall not cease or be abated during any repair period. In the event the Zoo elects to rebuild that portion of the Premises which has been damaged by the casualty loss, the Zoo shall be entitled to use all portions of the property/casualty insurance proceeds to pay for such costs.

### **13. INDEMNIFICATION**

**13.1 THE ZOO COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS 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, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE ZOO'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF THE ZOO, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF THE ZOO, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS CONTRACT, 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. THE ZOO SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR THE ZOO KNOWN TO THE ZOO THAT THE ZOO REASONABLY ANTICIPATES MAY ADVERSELY IMPACT THE CITY RELATED TO OR ARISING OUT OF THE ZOO'S ACTIVITIES UNDER THIS CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ZOO'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ZOO OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.**

**IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, WILL BE, TO THE EXTENT OF THE INDEMNIFICATION SET OUT ABOVE, IN CASES OTHER THAN THE SOLE NEGLIGENCE OF THE CITY, AN INDEMNITY EXTENDED BY THE ZOO 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. THE ZOO 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, VOLUNTEERS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.**

13.2 The Zoo specifically understands and agrees that the City accepts no liability for any loss by the Zoo of funds/revenues, merchandise, equipment, supplies, materials or other goods owned by the Zoo whether due to theft, robbery, break-in, vandalism, acts of God or any other causes.

13.3 The Zoo agrees to hold the City harmless for any theft, damages or destruction of signs, goods and/or other property of the Zoo on the Premises during the term of this Contract and after the Zoo vacates the licensed premises or upon expiration or termination of this Contract. The Zoo shall be fully and solely responsible for safeguarding and maintaining all such property.

#### 14. INSURANCE REQUIREMENTS

14.1 Any and all employees, representatives, agents or volunteers of the Zoo while engaged in the performance of any work required of the Zoo hereunder shall be considered employees, representatives, agents or volunteers of the Zoo only and not of the City. Any and all claims that may result from any obligation for which the Zoo may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of the Zoo.

14.2 Prior to the commencement of any work under this Contract, the Zoo shall furnish an original completed Certificate(s) of Insurance to the Director, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the Director and no officer or employee shall have authority to waive this requirement.

14.3 The City reserves the right to review the insurance requirements of this Section during the term of the Contract and any extension or renewal hereof and make recommendations to the Zoo to modify insurance coverages and their limits as believed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Contract. The Zoo agrees to make those changes recommended by the City to the extent the Zoo determines that the recommendations are in line with the type, nature and amount of coverage carried by similarly situated insured parties. In no instance will the City allow modification whereupon the City may incur increased risk.

14.4 The Zoo's financial integrity is of interest to the City, therefore, subject to the Zoo's right to maintain reasonable deductibles and premiums, the Zoo shall obtain and maintain in full force and effect for the duration of the Contract, and any extension hereof, at the Zoo's sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the City, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation	Statutory
	Employers Liability	\$100,000/\$300,000/\$300,000 for Employers Liability with umbrella or excess liability coverage or primary coverage to provide up to \$1,000,000.00.

- |    |   |   |
|----|---|---|
| 2. | Commercial General (Public) Liability Insurance to include coverage for the following:                                    | \$1,000,000.00 per Occurrence, with \$2,000,000.00 General Aggregate or its equivalent in umbrella or excess liability coverage |
|    | 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  |   |
|    | g. Explosion, collapse, underground   |   |
| 3. | Commercial General Liability, Split Limits as Required by the State of Texas for Amusement Rides*:                        |   |
|    | a. Bodily Injury  | \$1,000,000.00 per Occurrence   |
|    | b. Property Damage  | \$1,000,000.00 per Occurrence   |
| 4. | Comprehensive Automobile Liability (if appl.)   | Combined Single Limit for Bodily Injury and Property Damage of  |
|    | a. Owned/Leased Vehicles  | \$1,000,000 per occurrence  |
|    | b. Non-owned Vehicles   |   |
|    | c. Hired Vehicles   |   |
| 5. | Property Insurance: For physical damage to the property of the Zoo, including improvements and betterment to the Premises | Coverage for a minimum of eighty percent (80%) of the actual cash value of the Zoo's property                                   |
| 6. | Liquor Liability (where applicable)   | \$1,000,000 per Occurrence, with \$2,000,000 Aggregate or its equivalent in umbrella or excess liability coverage               |
| 7. | Business Interruption Insurance   | In an amount equal to the then Minimum Concession Fee   |

*\*Information received from the Texas Department of Insurance, Property and Casualty Program—Loss Control Regulation, Mail Code 103-9A, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104.*

The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and within industry standards for similar insured parties, may make a reasonable request for 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). Upon such request by the City, the Zoo shall exercise reasonable efforts to accomplish such changes in policy coverages in the manner described in Section 14.3 above, and shall pay the cost thereof.

14.5 The Zoo agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- (a) Name the City and its officers, employees, volunteers and elected representatives as additional insureds 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 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 policy will provide a waiver of subrogation in favor of the City.

The Zoo shall notify the City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

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

14.6 If the Zoo 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 Contract. Procuring of said insurance by the City, however, is not the exclusive remedy for failure of the Zoo to maintain said insurance or secure said endorsements. In addition to any other remedies the City may have upon the Zoo'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 the Zoo to stop work hereunder, and/or withhold any payments(s) which become due to the Zoo hereunder until the Zoo demonstrates compliance with the requirements hereof.

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

14.8 All personal property placed in the Premises shall be at the sole risk of the Zoo. The City shall not be liable, and the Zoo waives all claims for any damage either to the person or property of the Zoo or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about said Premises. The Zoo shall save and hold harmless City from any claims arising out of damage to the Zoo's property or damage to the Zoo's business, including subrogation claims by the Zoo's insurers.

## **15. DESIGNATED PARTIES**

15.1 The Director, or his designee, shall be City's principle agent for monitoring the Zoo's compliance with this Contract and shall be City's representative responsible for City's administration of this Contract.

15.2 Unless written notification by the Zoo to the contrary is received and approved by City, the Zoo's Executive Director shall be the Zoo's designated representative responsible for the management of all contractual matters pertaining to this Contract.

## **16. RECORDS, REPORTS AND AUDIT RIGHTS**

16.1 The Zoo, and any assignees, sublessees, sub-licensees or subcontractors shall maintain, in the City of San Antonio, Texas, all books, information and POS records fully and accurately reflecting its

operations hereunder in accordance with an accepted basis of accounting standards consistently applied. All such books, information and records, together with any other documentation necessary for verification of the Zoo's compliance with the terms of this Contract, shall be made available to Director or any of his authorized representatives, upon request. The City at its sole cost and expense shall have the right as often as may be reasonably necessary to conduct an audit, examine and make excerpts or transcripts from said books, information, POS records and documentation.

16.2 Within ninety (90) days after the end of the Contract Year the Zoo shall furnish to City annual financial statements audited to the level which is customary for the Zoo, which audit has been conducted by an independent certified public accountant within sixty (60) days after the end of the Contract Year. The Zoo shall also furnish to City, along with the audited financial statements, a reconciliation of gross sales revenue reported in audited financial statements to total "Gross Receipts" for the applicable contract year, as reported to the City in monthly "Gross Receipts Reports", on which compensation due to City was calculated. Such reconciliation should account for all differences between audited sales revenue for the contract year from the Concessions and "Gross Receipts" reported to the City during the same contract year, to include any complimentary, exchanged, or bartered tickets or items.

16.3 All applicable records and accounts of the Zoo, and any assignees, sublessees, sub-licensees or subcontractors, together with all supporting documentation generated directly or indirectly because of this Contract, shall be preserved in Bexar County, Texas, by the Zoo for five (5) years after the period to which they relate or until all audits, if any, relating to those documents are complete and findings on all claims have been finally resolved, and any litigation shall have been finally resolved, whichever is the greater period of time. In no event shall the Zoo be required to maintain such records beyond the five (5) year period set out above unless there is as of the end of that date an on going investigation of dispute relating to the periods addressed by those records. City, if it elects, has the right to require that any or all of such records and accounts be submitted for audit to City or to a certified public accountant selected by City, or any other City designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the payments due to City hereunder, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made. In addition, if payments have been understated by more than two percent (2%) and City is entitled to an increase in payments due hereunder as a result of such understatement, then, the above notwithstanding, the Zoo shall pay the cost of such audit by City or City's designated auditor. If it shall be determined, as a result of such audit, that there has been an overpayment by the Zoo in the payments due to City hereunder, then such overpayment shall become immediately due and payable by the City to the Zoo with interest at the maximum legal rate under applicable law from the date when said payments was over paid by the Zoo. The City shall provide the Zoo with a copy of any such audit immediately following its receipt by the City.

## **17. TAXES AND LICENSES**

17.1 The Zoo shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees and applicable employment taxes which are now or may hereafter be levied upon the Zoo, or upon the business conducted on the Premises by the Zoo, or upon any of the Zoo'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 the Zoo.

## **18. ASSIGNMENT AND SUBLETTING**

18.1 Any other clause of this Contract to the contrary notwithstanding, the Zoo shall not assign, subcontract, sub-license, sublet, transfer or pledge this Contract, or any portion hereof, or any interest in and to same, or any claim arising thereunder, or allow same to be assigned, subcontracted, sub-licensed, sublet, transferred or pledged by operation of law or otherwise, or sublet the Contract or any part thereof, or any interest in and to same, or any claim arising thereunder without the prior, written approval of City pursuant to the passage of an appropriate ordinance by the City Council of the City of San Antonio. Any

approved assignment, subcontracting, sub-license or sublease hereunder must be assigned, subcontracted, sub-licensed or subleased only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Contract, including the percentage of gross receipts payment provisions. Compliance by assignees, sublessees, sub-licensees or subcontractors with this Contract shall be the responsibility of the Zoo. Despite City approval of an assignment, subcontract or sublease, City shall in no event be obligated to any third party, including any assignee, subcontractor sub-licensee or sublessee of the Zoo for performance or work or services. Any attempt at unauthorized assignment, subcontract, sub-license, sublease, transfer or pledge shall be void ab initio and shall confer no rights upon any third person, and any assignment, subcontract, sub-license or subletting, transfer or pledge by the Zoo not authorized in compliance with the terms of this paragraph shall constitute grounds for termination of this Contract by City. The above notwithstanding, the Zoo shall have the right to assign this Contract to a subsidiary of the Zoo provided the subsidiary is 100% owned or controlled by the Zoo, the Zoo retains full liability for all of the Zoos obligations set out herein and the assignee (subsidiary) shall assume all of the Zoo's obligations set out herein.

18.2 Without the prior written consent of the Zoo, City shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Contract 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.

## **19. THE ZOO'S EMPLOYEES**

19.1 The Zoo shall provide and train, at its sole cost and expense, a sufficient number of employees to comply with its contractual obligations hereunder. Such employees of the Zoo shall in no way be construed as City employees nor shall they be entitled to any compensation or benefits from or by the City.

19.2 Prior to beginning operations of the Concessions, the Zoo shall develop and thereafter enforce a policy of employee standards for on-the-job conduct, appearance and demeanor. Such standards shall at a minimum provide for a dress code for employees which shall specify that all such employees will wear a uniform indicative of his or her employment.

19.3 The Zoo's employee staffing must adhere to local, state and federal labor standards and practices.

19.4 Prior to beginning operations of the concessions described herein the Zoo shall submit a copy of its "Drug-Free Workplace" plan to City.

## **20. NON - DISCRIMINATION**

20.1 The Zoo covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group based on race, color, sex, age, religion, disability, political affiliation, belief, or national origin, directly or indirectly, in employment practices or in admission to the Premises or the concessions described herein, which said discrimination the Zoo acknowledges is strictly prohibited.

## **21. MINIMUM WAGE**

21.1 The Zoo shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal statutes to persons employed in his operations hereunder.

## **22. CONFLICT OF INTEREST**

22.1 The Zoo 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, materials, 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 percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.

22.2 The Zoo 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.

## **23. CHANGES AND AMENDMENTS**

23.1 This Contract, together with the authorizing ordinance and any attached exhibits, constitutes the entire agreement between the parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto unless expressly stated otherwise herein. No amendment, modification or alteration of the terms of this Contract shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto including the passage of an appropriate ordinance by the City Council of the City of San Antonio.

23.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **24. NOTIFICATION OF ACTION BROUGHT**

24.1 In the event that the Zoo receives (i) a claim, demand, suit, notice of proceeding, cause of action or other action made or brought against the Zoo which is in writing and of a material adverse nature and which will or is likely to cause the Zoo to be unable to fulfill its obligations hereunder, or (ii) relating only to the Concessions, a written claim or service of a lawsuit for any claim which is in excess of \$10,000.00 (hereinafter collectively referred to as "claim"), the Zoo shall give written notice thereof to City within ten (10) days after itself being notified. The Zoo's notice to City shall state the date and hour of notification to the Zoo of the claim; the names and addresses of those instituting or threatening to institute the claim, the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Paragraph shall be delivered either personally or by mail in accordance with Section 27 of this Contract. Failure to notify the City of items in (ii) above shall in no event create a default hereunder.

## **25. SEPARABILITY**

25.1 If any clause or provision of this Contract is illegal, invalid 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, effective during the term of this Contract, then and in that event it is the intention of the parties hereto that such illegality, invalidity or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall not be affected thereby be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein, and it is also the intention of the parties to this Contract that in lieu of each clause or provision of this Contract

that is illegal, invalid or unenforceable there be added as a part of this Contract a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

## **26. NON-WAIVER OF PERFORMANCE**

26.1 No waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

26.2 No act or omission of City shall in any manner impair or prejudice any right, power, privilege, or remedy available to City hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **27. NOTICES**

27.1 Notices to City required or appropriate under this Contract shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, U.S. Mail, postage pre-paid, addressed to the City Clerk, P.O. Box 839966, San Antonio, Texas 78283-3966, and to the Director of Parks and Recreation, P.O. Box 839966, San Antonio, Texas 78283-3966, or to such other address as may have been designated from time to time in writing by the City Manager of the City of San Antonio. Notices to the Zoo shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, U.S. Mail, postage pre-paid, addressed to the Zoo at the address currently on file with the Director with copy to Frank Z. Ruttenberg 106 S. St. Mary's #800 San Antonio, Texas 78205, or at such other addresses on file with the City Clerk as the Zoo may provide from time to time in writing to City.

## **28. PARTIES BOUND**

28.1 The covenants and agreements herein contained shall inure to the benefits of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns, and if there shall be more than one party designated as the Zoo in this Contract, they shall each be bound jointly and severally hereunder.

## **29. APPROVAL OF OR ACTION BY THE CITY**

29.1 Whenever this Contract calls for approval by City or allows for some action by City, unless otherwise stated herein, such approval or action shall be evidenced by the written approval of, or the actions of the Director of Parks and Recreation Department of the City of San Antonio or such Director's designee, unless City Council approval by ordinance is required herein or is required by the City Charter or City Code.

**30. INCORPORATION OF EXHIBITS**

30.1 All Exhibits referred to in this Contract are intended to be and hereby are specifically made a part of this Contract. Such Exhibits are as follows:

Exhibit	Title
A	Historical Recipients of Free Tickets
B	Premises
C	Initial Concession Prices

**31. RELATIONSHIP OF PARTIES**

31.1 It is expressly understood and agreed by both parties hereto that the Zoo is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that City shall in no way be responsible therefor, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

31.2 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. It is understood and agreed that neither the method of computation of license fees, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of the Zoo as Licensee of the City.

31.3 Any and all of the employees of the Zoo, wherever located, while engaged in the performance of any work required by City under this Contract shall be considered employees of the Zoo only and not of City. Any and all claims that may arise from the Worker's Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the Zoo.

**32. TEXAS LAW TO APPLY**

**32.1 THIS CONTRACT 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.**

**33. GENDER**

33.1 Words of any gender used in this Contract 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.

**34. CAPTIONS**

34.1 The captions contained in this Contract are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Contract.

**35. ENTIRE AGREEMENT**

35.1 This Contract, together with the authorizing ordinance and any attached Exhibits constitutes the entire Contract between the parties hereto respecting the subject matter herein, and any other written or parol agreement with City regarding the subject matter herein is hereby expressly waived and terminated by the Zoo. It is understood that the Charter of the City requires that all contracts with the City be in

writing and adopted by ordinance. Further, no amendment, modification or alteration of the terms of this Contract shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto and approved by such an ordinance.

### **36. RENEWAL, EXTENSION, MODIFICATION AND RESTATEMENT**

36.1 This Contract is a renewal, extension, modification and restatement of the existing agreements between the Current Operator and the City relating to the Concessions which replaces in its entirety the existing agreements relating to the Concessions. In this regard, the above notwithstanding, if the closing between the Zoo and the Current Operator has not occurred before the date the City executes this Contract, this Contract will become effective immediately at such time as the Zoo closes on its purchase of certain assets relating to the Concession from the Current Operator.

*The rest of this page left intentionally blank.*

IN WITNESS WHEREOF, we have affirmed our signatures this 1st day of March, 2001.

CITY OF SAN ANTONIO, a Texas  
Municipal Corporation

San Antonio Zoological Society, Inc.

  
Assistant City Manager

  
Dr. Mark Thornton, Title: President

ATTEST:  
  
City Clerk  
Recommended:  
  
CITY ATTORNEY  
*for*

540739.29

**EXHIBIT "A "**

**Historical Recipients of Free Tickets**

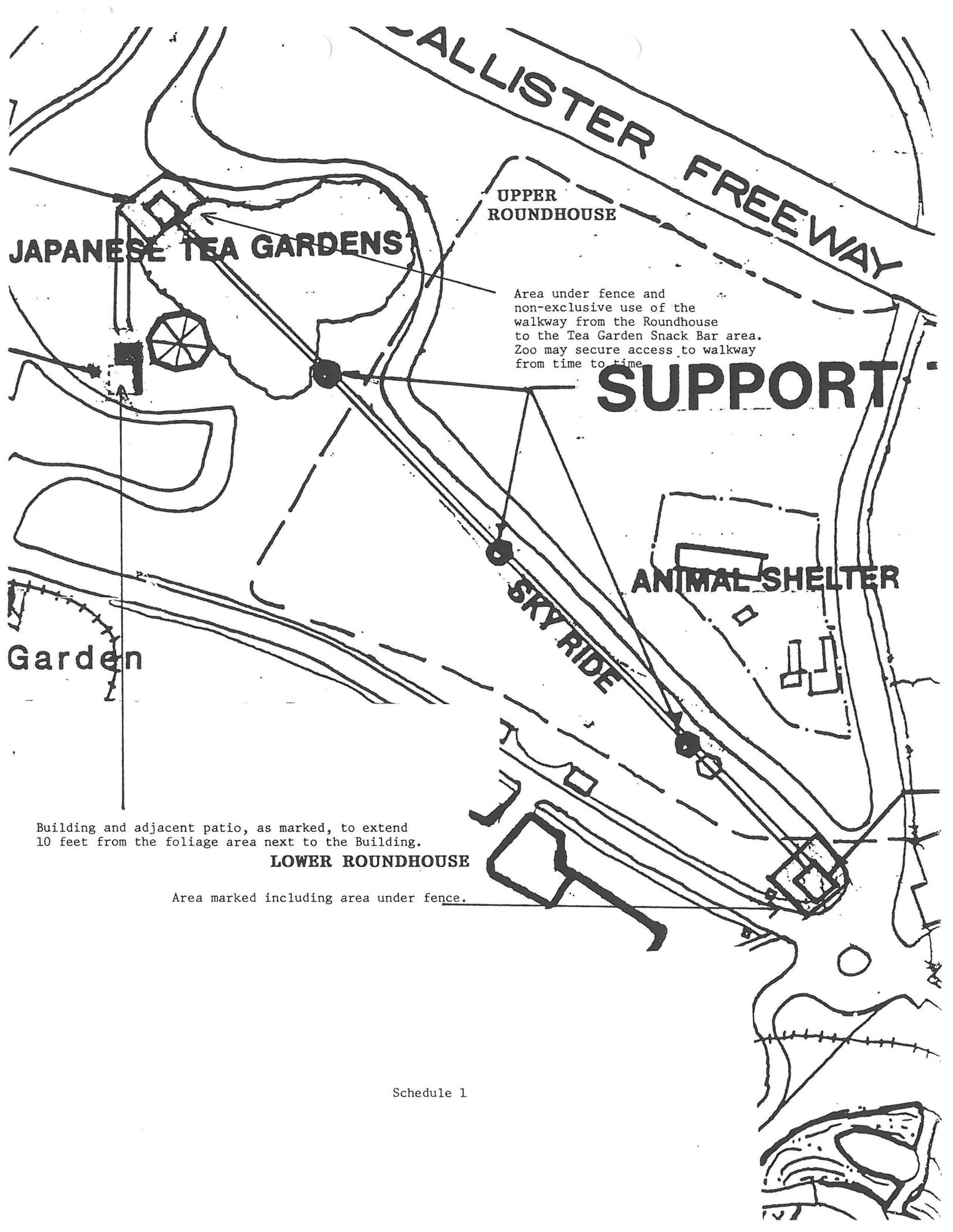
Free Zoo tickets to other non profit organizations	approx. 1,500 per year
Free Zoo passes distributed to Zoo Board Members to promote the Zoo	approx. 550 per year
Free Zoo Tickets for Zoo Employees	approx. 2,100

**EXHIBIT "B"**

**Premises**

The Premises shall consist of:

- (i) The areas including the existing railroad tract and the areas 10 feet on each side of that track.
- (ii) Each of the areas described in Section 2.2 of the Contract, in certain cases as more particularly described on Schedules 1-6 attached hereto. As to each of these Schedules the Zoo intends to have a survey prepared which, when completed and approved by the Zoo and the Director, shall be attached to this Contract to more specifically identify these areas of the Premises.



ALLISTER FREEWAY

UPPER ROUNDHOUSE

JAPANESE TEA GARDENS

Area under fence and non-exclusive use of the walkway from the Roundhouse to the Tea Garden Snack Bar area. Zoo may secure access to walkway from time to time.

SUPPORT

ANIMAL SHELTER

SKY RIDE

Garden

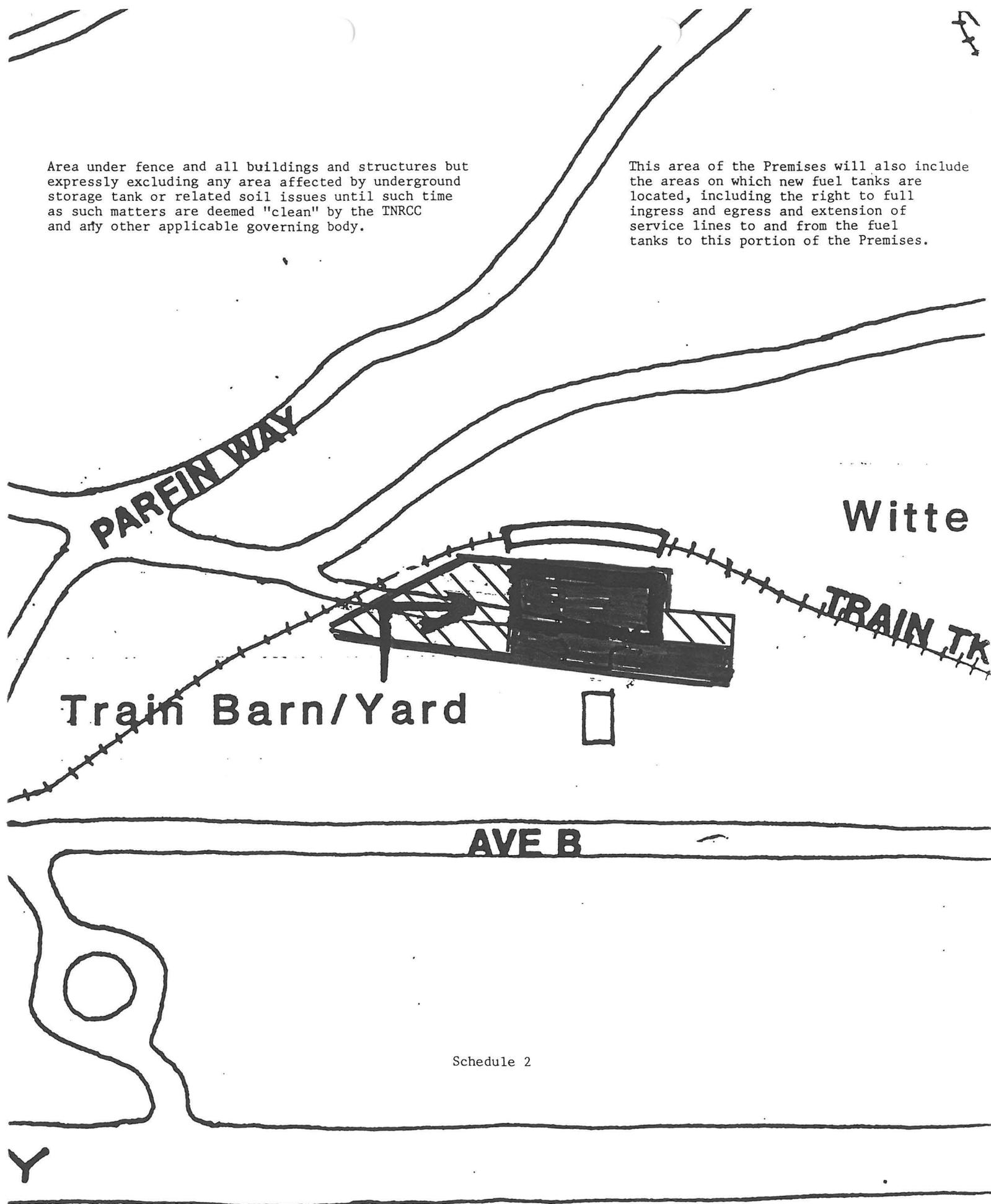
Building and adjacent patio, as marked, to extend 10 feet from the foliage area next to the Building.

LOWER ROUNDHOUSE

Area marked including area under fence.

Area under fence and all buildings and structures but expressly excluding any area affected by underground storage tank or related soil issues until such time as such matters are deemed "clean" by the TNRCC and any other applicable governing body.

This area of the Premises will also include the areas on which new fuel tanks are located, including the right to full ingress and egress and extension of service lines to and from the fuel tanks to this portion of the Premises.



Schedule 2

**TRAIN DEPOT AND SNACK BAR**

Area marked, plus area around sign

**LOT**

**S**

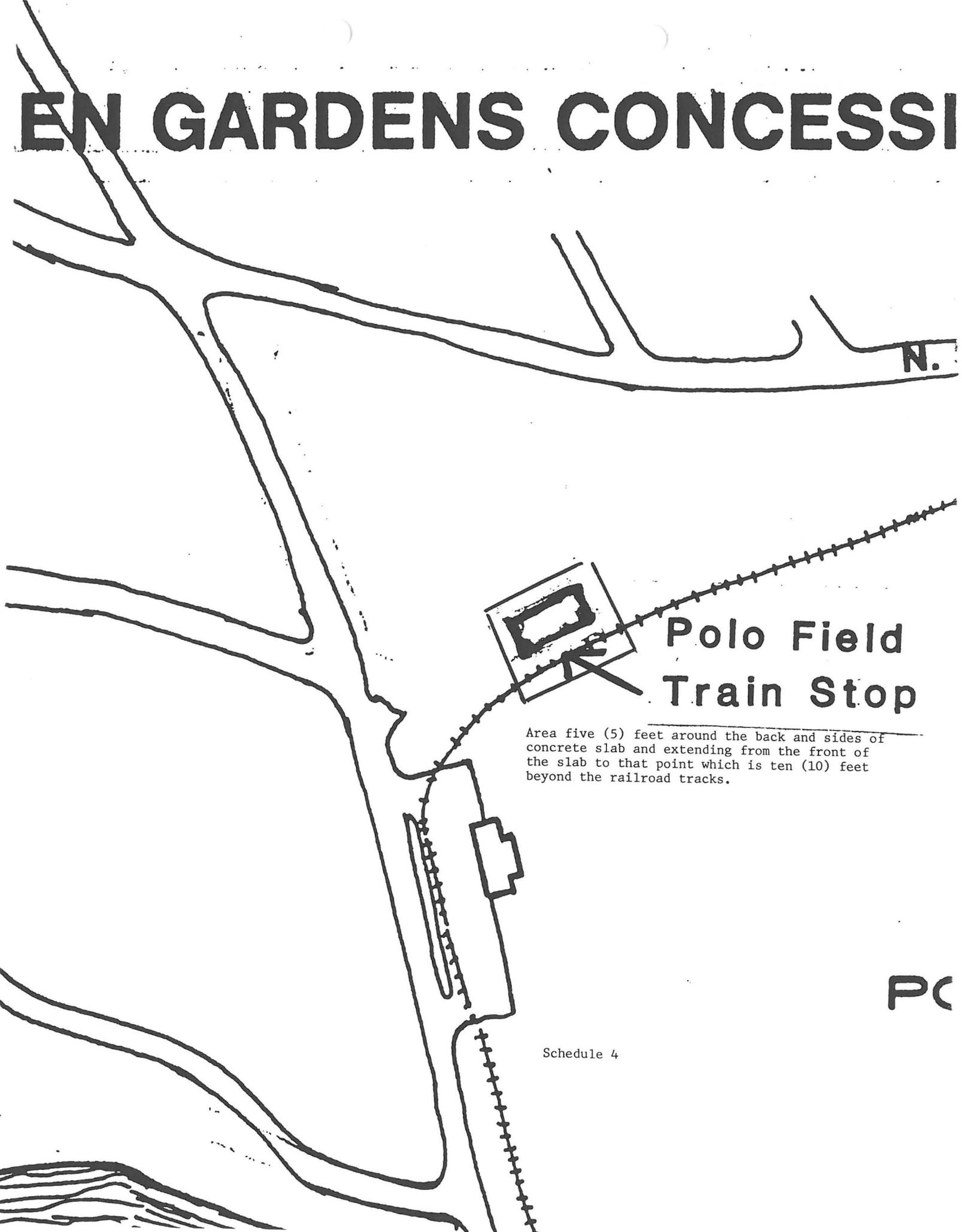
**KOEHL**

**WILDERNESS DR.**

Schedule 3



# EN GARDENS CONCESSI



**Polo Field  
Train Stop**

Area five (5) feet around the back and sides of concrete slab and extending from the front of the slab to that point which is ten (10) feet beyond the railroad tracks.

**PC**

Schedule 4

**LDG.**

**.DG.**

**TER FREEWAY**

**JAPANESE TEA GARDENS**

**SUPPORT**

Schedule 5

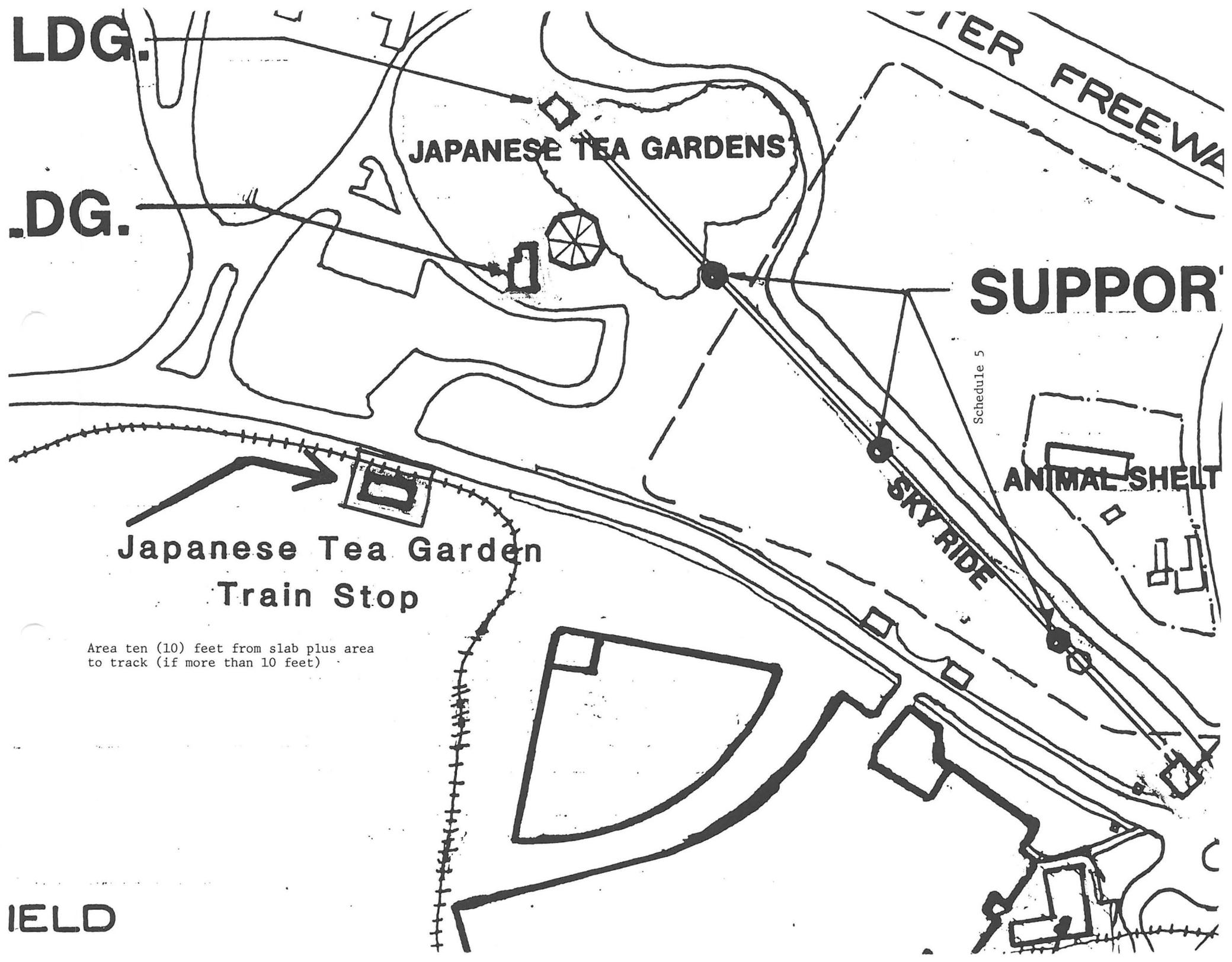
**ANIMAL SHELTER**

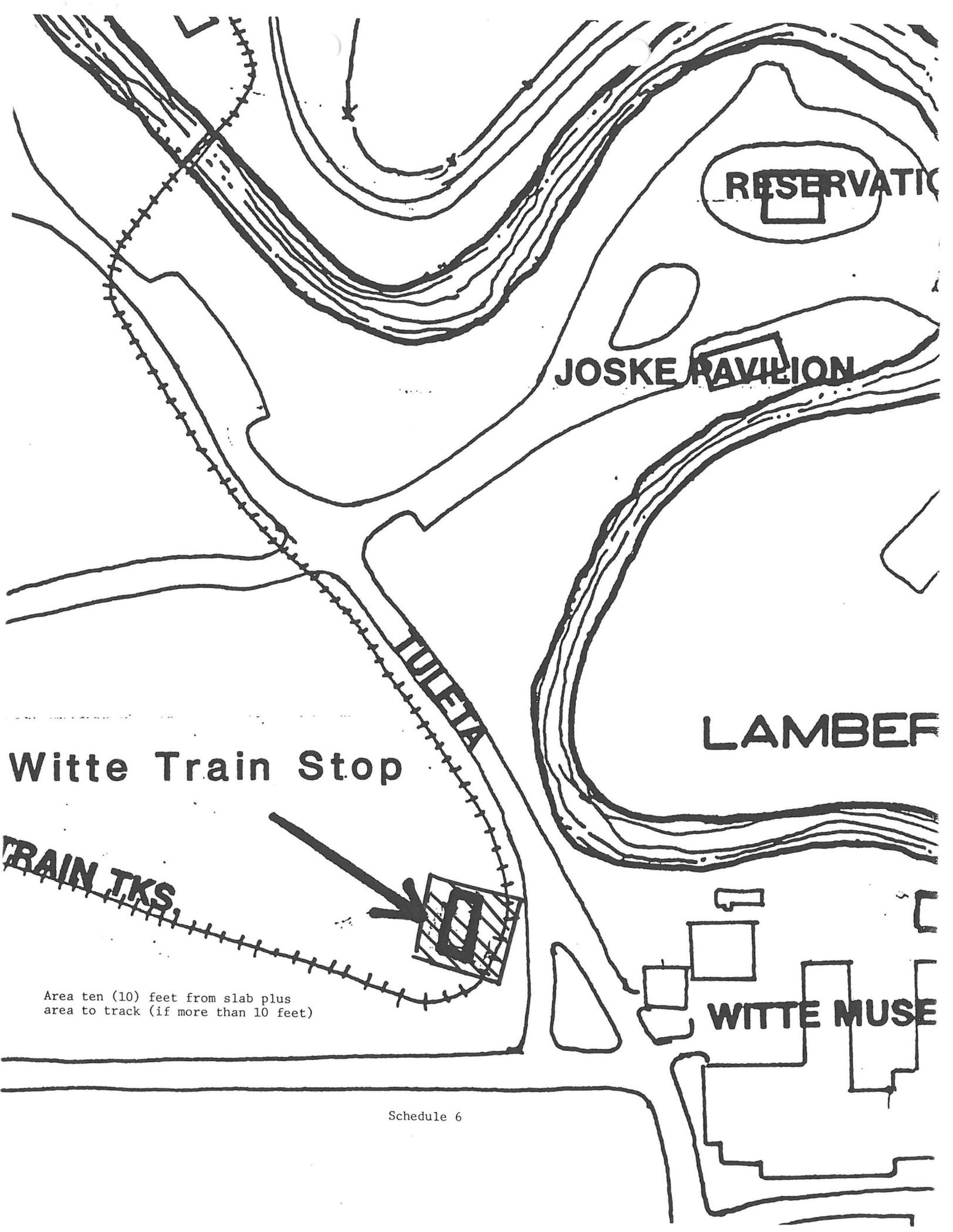
**SKY RIDE**

**Japanese Tea Garden  
Train Stop**

Area ten (10) feet from slab plus area  
to track (if more than 10 feet)

**FIELD**





RESERVATION

JOSKE PAVILION

LAMBER

Witte Train Stop

TULEITA

TRAIN TKS

Area ten (10) feet from slab plus  
area to track (if more than 10 feet)

WITTE MUSE

**EXHIBIT "C"**

**Train Ticket Prices**

Adults           \$2.25 plus tax

Children         \$1.75 plus tax

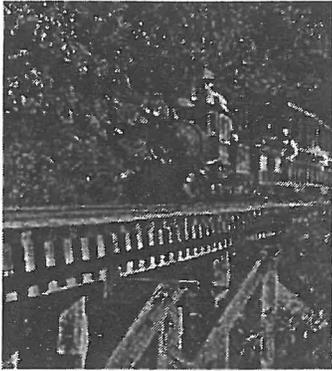
Children Ages 2 and Under - free

*Zoo's Operation of the Brackenridge  
Park Miniature Train, Food &  
Beverage, and Souvenir Concessions*

**Department of Parks & Recreation**

**February 15, 2001**

*Item 27*



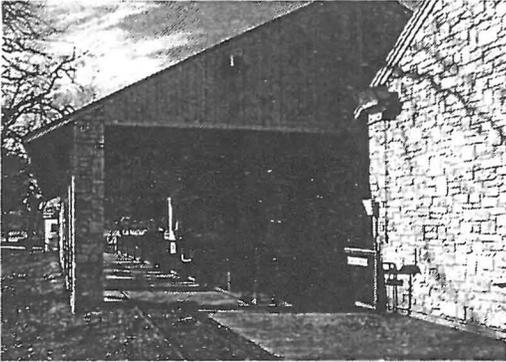
## *History*

- **1956- Miniature Train contract awarded, renewed once & assigned twice, last to Alamo Concession Supply (ACS). Revenue to City based on sliding scale from 10% to 25% of gross sales, depending on level of sales. Ends June 7, 2001.**
- **1958- Souvenir contract awarded, renewed numerous times & assigned twice, last to ACS. Revenue to City is a flat 20% of gross sales. Ends June 7, 2001.**

## *History, Cont.*



- **1972 -Food & Beverage contract awarded to ACS, renewed 4 times. Revenue to City is a \$4,000 per month flat rate. Contract ends June 30, 2002.**
- **In 1996 Zoo initiated discussions for the purchase of ACS's concessions in Brackenridge Park.**



## *History, Cont.*

- **October 2000 negotiations resumed based on:**
  - ACS entering into a Asset Purchase Agreement with Zoo.
  - ACS & Zoo receiving City approval of assignment of concessions to Zoo.
- **November 2, 2000, staff briefed City Council in Executive Session on concession issues & received direction for negotiations.**

## ***Zoo/ACS Asset Purchase Agreement***

- **Includes all equipment, materials, and supplies for the Miniature Train, Souvenir, and Food & Beverage Concessions.**
- **Includes inoperable Skyride equipment, machinery & buildings not owned by the City. (Contract expired November 1999). Skyride to be removed by Zoo.**
- **Purchase price from Zoo to ACS is \$516,705.**



## *Interest to City & Major Issues*

- **Zoo will be a reliable operator for the Brackenridge Park Concessions with a vested interest in maintaining high quality operations/ well maintained facilities.**
- **Miniature Train Concessions complex is “front door” to the Zoo and gives park visitors a first impression of all area attractions and facilities.**

## ***Interest to City & Major Issues, Cont.***

- **Zoo has long term lease with City for Zoo & has vested interest in operating quality concessions & has incentive to coordinate all issues with the City.**
- **Assignment to Zoo with new agreement will assure:**
  - **High return to City (20% of gross receipts compared to historic average of 18%).**

## *Interest to City & Major Issues, Cont.*

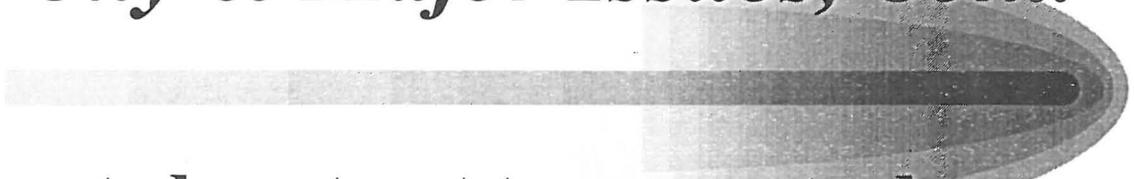
- **Maintain historic levels of revenue to City.**  
**When fully operational in the past the City has received an average of \$120,000 per year in concession payments.**
- **Assure operating condition and protection of the City owned infrastructure condition (depot & snack bar buildings, train tracks, train bridges, crossing arms, tunnel, train roundhouse).**



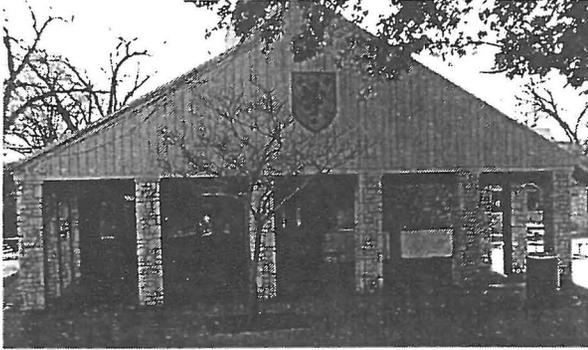
## *Interest to City & Major Issues, Cont.*

- **Approved Point of Sale (POS) system.**
- **Adequate staffing levels with well trained employees.**
- **Operation of quality attractions keyed into surrounding facilities, i.e. Zoo, Witte, Botanical Gardens.**
- **Removal of inoperable Skyride.**
- **New revenue source for City's Zoo.**

## *Interest to City & Major Issues, Cont.*



- **Bring antiquated contract terms up to date (insurance, indemnification, language clarifications, delineated concession area, etc.).**
- **Business interruption insurance to protect City revenue stream (\$120,000 guaranteed minimum concession payment coverage).**

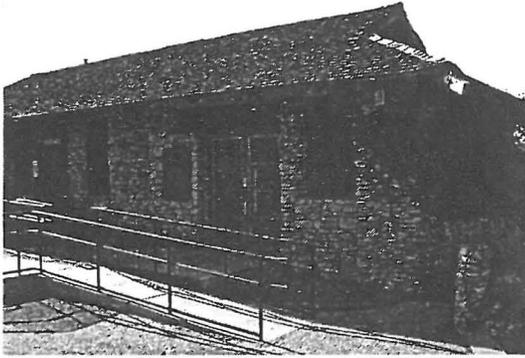


## *Ordinance Summary*

- **Authorizes assignment of 3 current ACS concession agreements (Miniature Train, Food & Beverage, and Souvenir Sales in Brackenridge Park) to the Zoo.**
- **Authorizes a new single agreement with the Zoo to operate these concessions.**

## *Agreement Highlights*

- **Zoo required to operate Miniature Train, provide food & beverage sales in Train Station and at Japanese Tea Garden, and souvenir sales at Train Station.**
- **Concessions to be open year round.**
- **Lease to run concurrently with City's lease of the Zoo property to the Society, expires on May 9, 2023.**
- **Zoo will provide insurance & indemnification as required by the City's Risk Manager.**



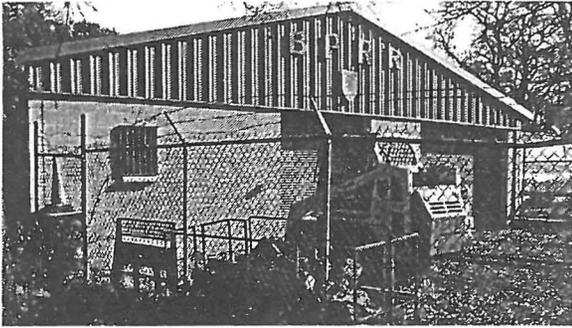
## *Agreement Highlights, Cont.*

- Zoo to pay City 20% of gross receipts, or \$120,000 per year, whichever is greater.
- Concession fees to City above the following levels will go to a dedicated City capital reserve fund for concession infrastructure:

<b>Years 1-5</b>	<b>\$140,000</b>
<b>Years 6-10</b>	<b>\$160,000</b>
<b>Years 11-15</b>	<b>\$180,000</b>
<b>Years 16-23</b>	<b>\$200,000</b>

## *Agreement Highlights, Cont.*

- **City & Zoo will coordinate use of the capital reserve funds, with City having final authority over the fund.**
- **Will have approved POS system.**
- **Miniature Train ride fares will remain at current levels; \$2.25 for adults & \$1.75 for children (+ sales tax). May increase fares no more than 20% in any 3 year period (same as Zoo admission fee limit in Zoo Lease).**
- **Food, beverage, souvenir & novelty sales prices will match those in the Zoo.**

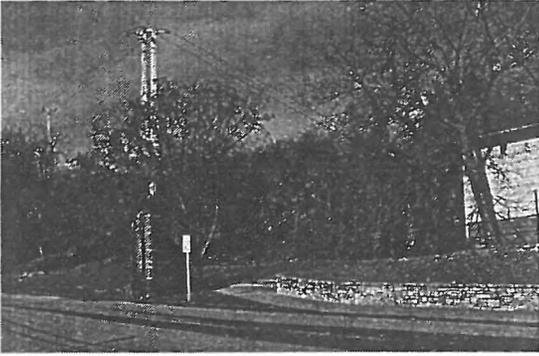


## *Agreement Highlights, Cont.*

- **All concessions will be ADA accessible.**
- **Zoo to provide all maintenance, operation, utility, & capital repair. If funds are available, may be reimbursed from the new City capital reserve fund only for capital repairs or improvements to City's infrastructure.**
- **Zoo will adhere to all Federal, State & Local laws and regulations, including amusement ride regulations.**

## ***Skyride Removal***

- **Skyride Concession agreement expired November 5, 1999.**
- **Skyride unsafe to operate & not economically feasible to repair or upgrade.**
- **Agreement with Zoo requires them to remove the Skyride within 2 years.**
  - **Zoo to use proceeds from sale of Skyride to cover all or some of removal costs.**
  - **May charge up to 50% of net costs of removal to City capital reserve fund.**



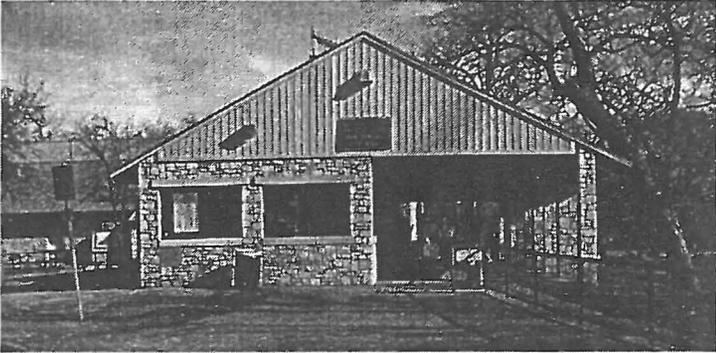
## ***Skyride Removal, Cont.***

- **If not removed by Zoo in 2 years, City to remove & will be compensated by the Zoo for the cost of removal.**
  - **Zoo to pay the City up to \$50,000 for removal costs.**
  - **City to retain proceeds from sale of Skyride to offset cost of removal.**
  - **Any net costs above the Zoo's \$50,000 & proceeds from the sale can be charged to City capital reserve fund with no limit to time required to recoup City net expenditures for the removal.**

## ***Skyride Roundhouse Buildings***



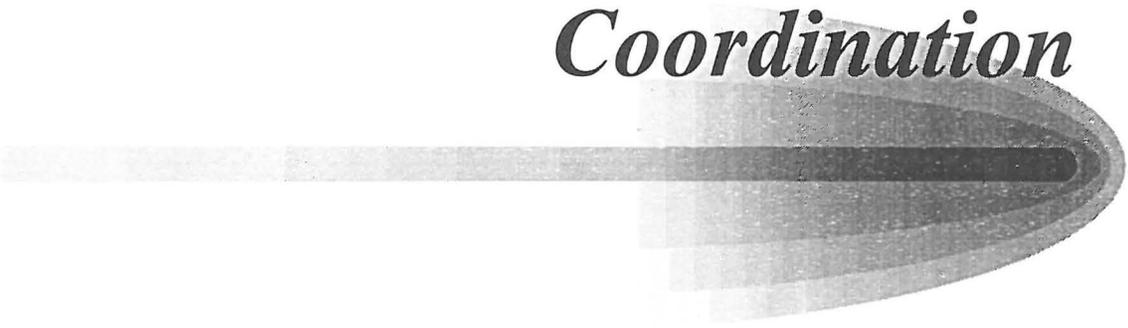
- **Skyride support buildings (2 roundhouses not owned by the City), can be considered for reuse by the Zoo.**
- **Must submit reuse plan to City within 18 months.**
- **Any reuse to be under the terms and conditions of this concession agreement.**
- **If not reused, must be removed at Zoo's cost, with no reimbursement.**



## *Schedule*

- **Upon passage of the ordinance authorizing this agreement, Zoo will have contractor begin work on train track and ballast system, at their costs.**
- **Goal is to have Miniature Train operational by Spring Break (March 2001).**
- **Food and Beverage Concession will be on line within 30 days of agreement.**
- **All concessions in full operation by Summer 2001.**

## *Coordination*



- **Agreement was developed in coordination with the City Attorney's Office.**
- **The City's Asset Management, Internal Review, and Budget Departments provided input into this process.**



## *Recommendation*

- **Staff recommends passage of this ordinance authorizing the assignment of the Brackenridge Park Concession Agreements to the Zoo and the immediate execution of a new single agreement with the Zoo for these concessions.**
- **City staff and representatives from the Zoo are available to answer any questions you might have on this item.**

CITY OF SAN ANTONIO

Interdepartment Correspondence Sheet

TO: Mayor and City Council
FROM: Malcolm Matthews, Director, Parks & Recreation Department
COPIES TO: Legal; Finance; Budget & Performance Assessment; File.
SUBJECT: ORDINANCE ASSIGNING THE CURRENT BRACKENRIDGE CONCESSION AGREEMENTS TO THE ZOO AND AUTHORIZING A NEW CONCESSION AGREEMENT WITH THE ZOO

Date: February 8, 2001

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the assignment of three (3) Brackenridge Park concession agreements, currently held by Alamo Concession Supply, Inc. (ACS), to the San Antonio Zoological Society, Inc. (Zoo), and the execution of a new single agreement with the Zoo for their operation of these concessions. Concessions include the operation of the Miniature Train, the Food and Beverage concession at the Brackenridge Train Station and Japanese TeaGardens, and souvenir and novelty sales in the Brackenridge Train Station. The Zoo has entered into a sales agreement with ACS for the Zoo's purchase of all of ACS's equipment, fixtures and inventory. This ordinance assigns the three (3) agreements to the Zoo and immediately authorizes a new agreement, and cancels the three (3) old agreements. Under the terms of this new agreement, the Zoo will pay the City 20% of gross receipts from the concessions, with a minimum annual payment of \$120,000. The term of this agreement will run concurrently with the Zoo's lease agreement with the City for the San Antonio Zoo, and will expire on May 9, 2023. We recommend passage of this ordinance assigning these concessions to the Zoo and authorizing a new agreement with the Zoo for these concession activities in Brackenridge Park.

BACKGROUND

Currently, ACS has three (3) separate concession agreements with the City for various concession services in Brackenridge Park. These agreements began in the 1950s and have been renewed and carried forward over the years at the original terms and conditions. ACS, in some instances doing business as The Brackenridge Eagle, Inc., has agreements for the following concessions in the park:

Table with 3 columns: Concession, Concessionaire, Expiration Date. Rows include Miniature Train Ride, Souvenir Sales, and Food & Beverage Sales.

Under the current separate concession agreements with ACS, they have paid the City concession fees based on three (3) different computations. The current Miniature Train Concession Fee is based on a percentage of gross sales, computed on a sliding scale as follows:

<u>Gross Sales</u>	<u>Concession Fee</u>
\$0 to \$50,000	10%
\$50,001 to \$150,000	15%
\$150,001 to \$200,000	20%
\$200,001 and above	25%

The current **Food and Beverage Concession** pays the City a flat \$4,000 a month in concession fees, or \$48,000 per year. Finally, the current **Souvenir and Novelty Sales Concession** pays the City 20% of gross sales. Concession payments from the Miniature Train and souvenir/novelty sales have dropped over the past few years because of the train being inoperable for various periods of time due to derailments, crossing arm problems, etc., and is currently not operating. The souvenir and novelty sales are tied directly to the operation of the train, since these sales take place out of the main train station in the park. Over the past five (5) years concession payments to the City from these three (3) separate concessions have averaged \$120,000 per year. All funds received from these concessions are deposited into the City's General Fund.

#### TRANSITION OF CONCESSIONS

ACS has entered into a \$516,705 sales agreement with the Zoo for the Zoo's purchase of all of ACS's assets and inventory for the concessions in Brackenridge Park. These assets include all of the miniature train rolling stock, support equipment, and supplies. The Zoo will also acquire all of the fixtures and inventory for the novelty and souvenir sales in the Train Station Gift Shop. Finally, the Zoo is purchasing all of the equipment, fixtures and inventory in the Train Station Snack Bar and the Japanese TeaGardens Snack Bar. The concession buildings, train tracks and other capital improvements are all owned by the City and will be included in the new concession agreement with the Zoo.

This sales agreement between the ACS and the Zoo will also convey all of the Skyride buildings, equipment and fixtures to the Zoo. The Skyride concession agreement between the City and ACS expired on November 5, 1999 and was not renewed. This concession was determined to be un-safe to operate in its current condition and would not be economically feasible to repair and/or upgrade and it is not included in the assignments to the Zoo. The Skyride was purchased by the Zoo at the request of the City to ensure its removal from the park. As a condition of our new concession agreement with the Zoo, they will remove the Skyride from the park within two (2) years of the execution of this agreement. If the Zoo fails to remove the Skyride within this time period, they will reimburse funds to the City for the City's removal of the Skyride. This time period was negotiated with the Zoo to deal with several issues including the complex nature of the removal of the towers, the need to explore the potential for the sale of the equipment and fixtures by the Zoo for either re-use or salvage, and the potential for re-use of support buildings by the Zoo.

#### ZOO BRACKENRIDGE CONCESSION AGREEMENT

As outlined above, this ordinance will assign ACS's current concession agreements to the Zoo, immediately authorize a new agreement to replace the three (3) original concession agreements and cancel the three (3) old ACS agreements. Terms of the City's new agreement with the Zoo for these Brackenridge Park Concessions include the following:

- Zoo will provide miniature train rides, food and beverage sales in the Train Depot and Japanese TeaGardens, and souvenir and novelty sales in the Train Depot.

- Concessions will be open to the public 365 days a year, with hours of operation to be approved by the City.
- Concession agreement will run concurrently with the City's lease of the San Antonio Zoo to the Zoo and will expire on May 9, 2023.
- Zoo will pay the City 20% of gross receipts from the concessions, or \$120,000 per year, whichever is greater.
- Any concession payments over \$140,000 in years 1 through 5; \$160,000 in years 6 through 10; \$180,000 in years 11 through 15; and \$200,000 in years 16 through 23 will be deposited into a dedicated City Concession Area Capital Repair Trust Fund to provide for the maintenance and repair of the concessions infrastructure which is City owned. The City and Zoo will coordinate on how funds are to be expended in the concession area from this fund, with emphasis on maintaining the City owned infrastructure and to address safety issues. Final decision on how these trust funds are to be used will remain with the City.
- The Zoo will utilize an approved "point-of-sale" system for all concessions.
- Fares for the miniature train rides will continue at the current rate of \$2.25 for adults and \$1.75 for children (plus applicable sales tax). Zoo may not increase the train ride fares more than 20% in any three (3) year period.
- Food, beverage, souvenir and novelty sales prices will equal prices currently charged at the Zoo and the food and beverage items shall be priced no more than 10% above that for similar items sold in stores within a one mile radius of Brackenridge Park. Examples include 12 oz. soda for \$1.00, coffee for \$.75, tacos for \$1.20, hamburger for \$3.25, 8" pizza for \$3.75, hotdog for \$2.00.
- Train and other concession facilities will be ADA accessible.
- Zoo will provide for all operational, maintenance, staffing and capital improvements for the concessions.
- Zoo will adhere to all Federal, State and Local laws and regulations in the operations of these concessions, including the Amusement Ride Safety Act. This will include all health and safety regulations, City Boards and Commissions approval requirements and licenses and permits.
- All miniature train drivers or operators will be certified as Level One operators by the National Association of Amusement Ride Safety Officials.
- Zoo will provide insurance and indemnification as required by the City Attorney and the City's Risk Manager.
- Zoo will operate concessions consistent with the requirements of the City for accounting practices and audits.
- The Zoo will remove the Skyride and all of the ancillary equipment within two (2) years of the execution of this agreement and the Zoo may charge up to one-half of the net cost of removal (less proceeds from any sale of equipment and fixtures) to the capital repair fund, if funds are available. Failure to remove the Skyride will result in the Zoo paying the City up to \$50,000 for City expenses involved with this removal. In addition, if the City removes the Skyride the City will retain any proceeds for the sale of the attraction, and the balance of the cost of removal, less the Zoo payment and proceeds for any sale, will be charged to the capital repair fund. The removal by the City will not place any future demands on the City's General Fund.

## POLICY ANALYSIS

This assignment of the Brackenridge Park Concessions to the Zoo brings in a stable operator with a vested interest in maintaining a high quality safe operation. In essence, the Miniature Train complex is the front door for the Zoo, and gives park visitors a first impression of all area attractions and facilities. The Zoo has a long term lease with the City for the Zoo property, and these concessions will operate in

concert with a proven public attraction system. In addition, this new concession agreement with the Zoo incorporates all current City requirements on accounting, auditing, insurance, indemnification, health and safety issues, and ADA requirements. Finally, this agreement assures the current level of income to the City's General Fund, with the potential for additional revenue, and with funds set aside to maintain a high quality City owned concession area. Income from these concessions will assist the Zoo in operating the Zoo facility and making improvements to that attraction.

#### FINANCIAL IMPACT

Over the past five (5) years concession payments to the City from these three (3) ACS agreements have averaged \$120,000 per year. Under the terms of this new agreement, the Zoo will pay the City 20% of gross receipts from the concessions, with a minimum annual payment of \$120,000. All concession payments are deposited with the City. Under the terms of this agreement, there is no cap on concession payments, however, payments received above several thresholds will be dedicated to the repair and upgrading of the City's concession infrastructure. These dedicated funds will assure the City's investment in the concession infrastructure in the park and could reduce future investments of General Fund resources for these concessions. All concession payments prior to this threshold will be deposited into the City's General Fund. Finally, the Zoo is responsible for all operational, utility, and maintenance costs associated with this concession. This concession agreement will place no demands on the City's General Fund, but will result in a minimum of \$120,000 in annual revenue to the City General Fund.

#### COORDINATION

This agreement was developed in coordination with the City Attorney's Office. In addition, the Asset Management Department and Office of Internal Review provided input into this process.

#### SUPPLEMENTARY COMMENTS

Attached is an Ethics Ordinance Disclosure Statement for the San Antonio Zoological Society, Inc.



Malcolm Matthews,  
Director of Parks & Recreation

APPROVED BY:



Melissa Vossmer,  
Assistant City Manager



Alexander E. Briseño  
City Manager