

AN ORDINANCE      2012-04-19-0295

**AUTHORIZING A 10 YEAR AGREEMENT WITH THE SAN ANTONIO  
CONSERVATION SOCIETY TO CONDUCT THE ANNUAL NIGHT IN  
OLD SAN ANTONIO EVENT IN LA VILLITA FOR THE PERIOD 2013-  
2022, WITH AN OPTION TO EXTEND FOR UP TO 10 YEARS.**

\* \* \* \* \*

**WHEREAS**, since 1948, the San Antonio Conservation Society has conducted a Night in Old San Antonio (NIOA) in La Villita; and

**WHEREAS**, the four night event is held in La Villita each April in conjunction with Fiesta activities; and

**WHEREAS**, NIOA attracts approximately 85,000 guests, which are treated to local entertainment and food; and

**WHEREAS**, over 16,000 volunteers support the Conservation Society's production of NIOA; and

**WHEREAS**, the new agreement will authorize NIOA in La Villita for a ten year period (2013-2022) with an option to extend for up to ten years, subject to City Council approval; and

**WHEREAS**, all revenue due to the City shall be dedicated to improvements within the La Villita Historic District; and

**WHEREAS**, as in the existing agreement, the Conservation Society and the City will agree upon which improvements to fund and the Conservation Society will be responsible for all construction administration; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager, or her designee, or the Director of the Downtown Operations Department, or his designee, is hereby authorized to execute a ten year agreement with the San Antonio Conservation Society to conduct the annual Night in Old San Antonio event in La Villita for the period 2013-2022, with an option to extend for up to ten years. The agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

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

**SECTION 3.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 19th day of April, 2012.



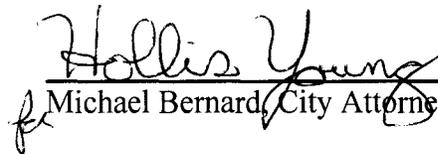
M A Y O R  
Julián Castro

**ATTEST:**

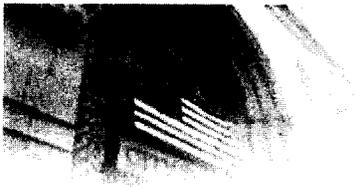


\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
for Michael Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 23

<b>Name:</b>	5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19A, 19B, 20A, 21A, 21B, 21C, 22A, 22B, 22C, 22D, 23						
<b>Date:</b>	04/19/2012						
<b>Time:</b>	10:12:15 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a 10 year agreement with the San Antonio Conservation Society to conduct the annual Night in Old San Antonio event in La Villita for the period 2013-2022, with an option to extend for up to 10 years. [Pat DiGiovanni, Deputy City Manager; Jim Mery, Interim Director, Downtown Operations Department]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

LICENSE AGREEMENT  
A NIGHT IN OLD SAN ANTONIO® (NIOA®)

This License Agreement is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation, acting herein through its City Manager pursuant to Ordinance \_\_\_\_\_ and passed and approved on \_\_\_\_\_, 2012 and the San Antonio Conservation Society (hereinafter referred to as "LICENSEE"), acting by and through its duly authorized officers, WITNESSETH:

1. GRANT OF LICENSE

- 1.1 CITY, for and in consideration of the payment fee hereinafter set forth and the covenants and promises herein contained to be kept, performed and observed by LICENSEE, does hereby grant to LICENSEE, and LICENSEE does accept, for the operation of the event known as "A Night in Old San Antonio" the right to use and occupy the Premises as identified in Section 2.1, during the indicated dates and times.

2. LICENSE OF PREMISES

- 2.1 For years 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021 and 2022: Except for the limitations outlined hereinafter, the CITY for and in consideration of the payment, covenants and premises hereinafter contained to be kept, performed, and observed by LICENSEE does license unto the LICENSEE and the LICENSEE does hereby hire and accept from the CITY, those certain premises in the La Villita section of San Antonio, Bexar County, Texas, known and described as:

- 2.1.1. Arneson River Theatre, including its stage, seating area, patio and all accessory structures

- 2.1.2. Plaza Juarez
- 2.1.3. Cos House and Patio
- 2.1.4. Maury Maverick Plaza
- 2.1.5. O'Neil Ford Plaza
- 2.1.6. Plaza Nacional
- 2.1.7. Streets/Walkways
  - 2.1.7.1 La Villita Street (Paseo del La Villita), including both its north and south sidewalks, from the entrance to La Villita on South Alamo Street to the east side of its intersection with South Presa Street;
  - 2.1.7.2 Alamo Walkway: from the west curb line and sidewalk of South Alamo Street from the northwest corner of the intersection of South Alamo and East Nueva Streets to the intersection of South Alamo and Villita Street;
  - 2.1.7.3 King Philip V Walkway;
  - 2.1.7.4 Guadalupe Walk;
  - 2.1.7.5 Hidalgo Walk;
  - 2.1.7.6 Nacional Street;

- 2.1.7.7 San Antonio River Walk: The south bank river level, from the east side of the Presa St. bridge to the north boundary intersection of the Bombach sidewalk and the River Walk;
- 2.1.7.8 East Nueva Street: the westbound lanes including the center median and the north sidewalk, from the west curb line of South Alamo Street to the west side of the intersection with South Presa Street, then continuing along East Nueva Street and including the westbound lanes 235 feet west of South Presa Street;
- 2.1.7.9 Presa Street: beginning at the south intersection including the east and west sidewalks beginning at the south curb line of Market Street, south to the middle of the intersection of Presa Street and East Nueva Street; access will be allowed to Contessa Hotel loading dock and Briscoe Museum driveway;
- 2.1.7.10 Alamo Street southbound lanes & median from Villita Street to Nueva Street. LICENSEE understands and agrees that CITY is considering a major reconfiguration of Alamo Street which may reduce the area available for use by NIOSA. Subsequent to the reconfiguration of Alamo Street, CITY reserves the right to apply new conditions as appropriate to the reconfigured street.
- 2.1.7.11 And all alleys, passageways, patios, sidewalks, and enclosures within the area known as La Villita not under written lease agreements between the CITY and a third party or reserved for ongoing administrative and maintenance operations by the CITY and which Licensed Premises are set out on the plat marked "EXHIBIT A" attached. LICENSEE understands that the CITY reserves a superior right to retain use of CITY enclosures and

storage areas and at CITY's own discretion may allow LICENSEE to use CITY enclosures and storage areas.

2.1.8 Bolivar Hall, the second floor meeting room for use by LICENSEE for administrative purposes only, for thirty (30) calendar days and beginning 30 calendar days prior to and including the last day of teardown. Bolivar Hall second floor balcony may be used by LICENSEE from first date of setup through last day of teardown.

2.1.8.1 LICENSEE shall not inhibit access or administrative operations of La Villita during non-event hours. Access and adjacent use of Bolivar Hall for NIOSA financial activity shall be independent of normal La Villita administrative and office functions.

2.2 LICENSEE understands that building porches and/or overhangs which are a part of the premises leased to year-around tenants of La Villita and, therefore, such porches and/or overhangs are not a part of the Licensed Premises described in Paragraph 2.1 above. Accordingly, such porches and/or overhangs may not be used by LICENSEE without written authorization from the CITY.

2.2.1 CITY is familiar with LICENSEE'S storage requirements for "A Night in Old San Antonio" from previous experience and CITY agrees to provide such space within the bounds of La Villita as may be reasonably available, consistent with the needs of CITY'S normal management and operation of La Villita and as approved by the Facilities Operations Coordinator of La Villita.

2.3 LICENSEE understands and agrees that the Texas Cavaliers, in connection with the annual Fiesta River Parade, shall have primary use and occupancy rights of the Arneson River Theater and Plaza Juarez on the parade dates officially

established and approved by the Fiesta San Antonio Commission or its successor.

2.4 LICENSEE and the Texas Cavaliers shall cooperate with each other so that the staging of "A Night in Old San Antonio" will not preclude the use of the Arneson River Theater and Plaza Juarez for the Texas Cavaliers' River Parade and post-parade activities/receptions. However, in no event will the Texas Cavaliers be permitted to materially interfere with staging of "A Night in Old San Antonio" and in no event will LICENSEE be permitted to materially interfere with staging of Fiesta River Parade.

2.4.1 In addition to the Arneson River Theatre and Plaza Juarez, LICENSEE may allow Texas Cavaliers to use a portion of King Philip V walkway under certain terms and conditions granted by LICENSEE to the Texas Cavaliers. On certain dates within the set-up, event and teardown dates of this agreement, CITY reserves the right to use specific areas and/or plazas of the Licensed Premises for significant events.

2.5 On certain dates within the set-up, event and teardown dates of this agreement, CITY reserves the right to use specific areas and/or plazas of the Licensed Premises for significant events.

2.6 Except for the provisions of Section 2.4 and 2.5, the Licensed Premises shall be occupied and used exclusively by LICENSEE for the operation of the event known as "A Night in Old San Antonio", and for no other purpose without the written consent of the CITY for the following inclusive dates.

2.7 Dates and Hours of NIOSA for the years:  
2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022.

2.7.1.1

Days of Setup

April 16, 2013 through April 22, 2013	8:00 a.m. to 11:00 p.m.
April 15, 2014 through April 21, 2014	8:00 a.m. to 11:00 p.m.
April 14, 2015 through April 20, 2015	8:00 a.m. to 11:00 p.m.
April 12, 2016 through April 18, 2016	8:00 a.m. to 11:00 p.m.
April 17, 2017 through April 23, 2017	8:00 a.m. to 11:00 p.m.
April 17, 2018 through April 23, 2018	8:00 a.m. to 11:00 p.m.
April 16, 2019 through April 22, 2019	8:00 a.m. to 11:00 p.m.
April 14, 2020 through April 20, 2020	8:00 a.m. to 11:00 p.m.
April 13, 2021 through April 19, 2021	8:00 a.m. to 11:00 p.m.
April 12, 2022 through April 18, 2022	8:00 a.m. to 11:00 p.m.

2.7.1.2

Days of Operation:

April 23, 2013 through April 26, 2013	8:00 a.m. to 12:00 midnight
April 22, 2014 through April 25, 2014	8:00 a.m. to 12:00 midnight
April 21, 2015 through April 24, 2015	8:00 a.m. to 12:00 midnight
April 19, 2016 through April 22, 2016	8:00 a.m. to 12:00 midnight
April 25, 2017 through April 28, 2017	8:00 a.m. to 12:00 midnight
April 24, 2018 through April 27, 2018	8:00 a.m. to 12:00 midnight
April 23, 2019 through April 26, 2019	8:00 a.m. to 12:00 midnight
April 21, 2020 through April 24, 2020	8:00 a.m. to 12:00 midnight
April 20, 2021 through April 23, 2021	8:00 a.m. to 12:00 midnight
April 19, 2022 through April 22, 2022	8:00 a.m. to 12:00 midnight

2.7.1.3

Days of Removal (Teardown):

April 27, 2013 through May 1, 2013	8:00 a.m. to 9:00 p.m.
April 26, 2014 through April 30, 2014	8:00 a.m. to 9:00 p.m.
April 25, 2015 through April 29, 2015	8:00 a.m. to 9:00 p.m.
April 23, 2016 through April 27, 2016	8:00 a.m. to 9:00 p.m.
April 28, 2017 through May 2, 2017	8:00 a.m. to 9:00 p.m.
April 28, 2018 through May 2, 2018	8:00 a.m. to 9:00 p.m.

April 27, 2019 through May 1, 2019	8:00 a.m. to 9:00 p.m.
April 25, 2020 through April 29, 2020	8:00 a.m. to 9:00 p.m.
April 24, 2021 through April 28, 2021	8:00 a.m. to 9:00 p.m.
April 23, 2022 through April 27, 2022	8:00 a.m. to 9:00 p.m.

2.7.1.4 "Night in Old San Antonio" Hours of Event: Beginning at 5:30 p.m. to 10:30 p.m. for each date identified in Section 2.7.1.2.

2.7.1.5 Event dates to be determined (TBD) as of the execution date of this agreement shall be based on the Fiesta dates officially approved by the Fiesta San Antonio Commission or its successor.

2.1.7.2 La Villita office and restrooms in second floor of Bolivar Hall shall be available for use by SAPD operations staff during event.

### 3. CONSIDERATION

3.1 In consideration of the License and for CITY'S granting LICENSEE concession rights to sell food, beer, wine and other beverages, souvenirs, or other merchandise or services of any sort on said Licensed Premises during the term of the License Agreement, as rental of said space and Licensed Premises, the LICENSEE agrees:

3.1.1 For Years 2013-2017 to pay to the La Villita Historic Preservation Fund, a minimum annual guarantee or twenty-three percent (23%) of each adult paid admission net of ticket service fees and any and all state or local taxes or assessments as applicable, whichever is greater. For Years 2018-2022 to pay to the La Villita Historic Preservation Fund a minimum annual guarantee or twenty-five

percent (25%) of each adult paid admission net of ticket service fees and any and all state or local taxes or assessments as applicable, whichever is greater.

- 3.1.2 For the year 2013 the minimum annual guarantee will be \$164,150.00. For years 2014 through 2016, LICENSEE promises to increase the minimum annual guarantee by one percent (1%); for years 2017 to 2019 the minimum annual guarantee will increase by one and one half percent (1.5%); and for years 2020 through 2022 the minimum annual guarantee will increase by two percent (2%).

Minimum Annual Guarantee to  
La Villita Historic Preservation Fund

Year 2013	\$164,150.00
Year 2014	\$165,792.00
Year 2015	\$167,449.00
Year 2016	\$169,124.00
Year 2017	\$171,661.00
Year 2018	\$174,236.00
Year 2019	\$176,849.00
Year 2020	\$180,386.00
Year 2021	\$183,994.00
Year 2022	\$187,674.00

In the event that the performance by LICENSEE under this agreement during any particular year of NIOSA is materially hindered by Acts of God (including but not limited to adverse weather, natural devastation, war, terrorist acts, government regulations, civil disorders, curtailment of transportation facilities, or partial or total destruction of the venue where the EVENT is being held), then for such particular year of NIOSA that is subject to the Act of God, the minimum annual guarantee amount for such year may be waived by the CITY. CITY and LICENSEE will be required to negotiate terms for a suitable minimum amount payable to the CITY for such year. For purposes of this agreement, materially hindered shall be defined as total NIOSA adult ticket sales revenue twenty percent (20%) less than the total NIOSA adult ticket sales revenue of the previous year

- 3.2 In addition, LICENSEE shall pay any and all taxes and/or assessments applicable to its operations hereunder and shall instruct all exhibitors regarding

their responsibilities related to payment of sales tax. CITY assumes no liability whatsoever for such taxes, assessments or fees.

3.3 In further consideration of the annual payment, CITY shall permit LICENSEE'S use of chairs, tables, and existing stages available from La Villita stock without charge to LICENSEE.

3.3.1 CITY and LICENSEE shall inspect and review the premises of La Villita, all furniture and equipment made available for use by LICENSEE and acknowledge prior to use and after the event, the condition of the premises, furniture and equipment, and note damages and changes to the condition of said premises, furniture and equipment.

3.3.2 LICENSEE agrees to reimburse CITY at fair market value for any damaged (normal wear and tear excepted) and/or lost tables, chairs and/or stages within thirty (30) calendar days of receipt of formal notice for reimbursement. CITY agrees to provide formal notice for reimbursement within thirty (30) calendar days after event.

#### 4. USE OF PREMISES

4.1 The PREMISES shall be occupied and used by LICENSEE solely for the operation of the event known as the "A Night in Old San Antonio". LICENSEE agrees and specifically understands that this License is confined to the privilege to use the PREMISES set forth herein and that the permission herein given does not grant LICENSEE any interest or estate in the PREMISES but is a mere personal privilege to do certain acts of temporary character upon said PREMISES, including access thereto at all times during the terms of this License. CITY reserves the right to enforce all necessary and proper rules for the

management and operation of the PREMISES and may eject from the PREMISES any person or person it deems objectionable.

4.2 LICENSEE agrees to insure that exhibitors and individuals under its control area authorized by it to participate in the "A Night in Old San Antonio" shall in no way obstruct ingress or egress or limit accessibility to the PREMISES by the general public or by those tenants of the CITY having leasehold interests in or about the PREMISES during non-event hours as identified in Section 2.7.1. On days of event operation ingress/egress to the PREMISES by the general public or tenants of the CITY having leasehold interests in or about the PREMISES will be allowed from 8 a.m. until 4 p.m. (non-event hours).

4.3 LICENSEE agrees that every exhibitor or individual under its control shall abide by, conform to, and comply with all applicable laws, ordinances, rules and regulations and will not do or permit to be done, anything in violation thereof. If the attention of LICENSEE is called to any such violation, LICENSEE or those under his control will immediately desist from and correct such violation. Further, LICENSEE covenants that it or those under its control shall not discriminate against any individual or group on account of race, color, sex, religion, age handicap, or national origin in the use of the PREMISES.

## 5. TERM AND TERMINATION

5.1 The term of this License Agreement is for a ten (10) year period beginning on May 4, 2012 and ending on May 1, 2022.

5.2 This License Agreement may be extended for up to ten (10) years subject to City Council approval.

5.3 LICENSEE or CITY may terminate this agreement by giving nine (9) months written notice.

## 6. ACCEPTANCE AND CONDITION OF PREMISES

- 6.1 Prior to each annual event authorized herein, CITY and LICENSEE will examine the PREMISES to determine that there is in and about them nothing dangerous to life, limb or health. Upon such determination and after LICENSEE has had full opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LICENSEE'S permitted use of the licensed Premises shall be conclusive evidence of LICENSEE'S acceptance thereof in good order and satisfactory condition, and LICENSEE hereby accepts the Licensed Premises in its present **AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. LICENSEE accepts the Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for LICENSEE'S intended purposes.**
- 6.2 LICENSEE agrees that no representations, respecting the condition of the Premises, and no promises to decorate, alter, repair or improve the Premises, either before or after the execution hereof, have been made by CITY or its agents to LICENSEE unless the same are contained within this agreement.

## 7. UTILITIES AND PORTABLE TOILET FACILITIES

- 7.1 LICENSEE shall be responsible for all connection to all CITY gas, water, electricity, sewer, cable TV or other utilities, if any, that may be necessary for its operations as authorized on the Licensed Premises. LICENSEE further agrees to pay all charges associated with effective maintenance of said event. Should connection or reconnection of any utility become necessary, LICENSEE agrees to pay any and all associated expenses.

7.2 CITY shall at all times furnish and maintain in good working order all existing electrical power, water, and plumbing facilities. LICENSEE may install such additional TEMPORARY electrical wiring as it deems necessary to accommodate the needs of the event and LICENSEE must comply with applicable City Codes, including but not limited to the Uniform Building Code. All cost associated with the installation of temporary electrical wiring and removal of such shall be borne by LICENSEE.

7.2.1 LICENSEE will keep all electrical lines a minimum of six (6) feet above ground level, where appropriate, and in a manner conforming to all applicable building and fire codes and in a manner which will not restrict the removal of trash as required hereinafter.

7.2.2 All electrical lines at ground level will be properly identified, secured and covered where exposed to the public in an effort to ensure appropriate safety conditions.

7.3 The CITY shall service existing public restroom facilities from 7:45 a.m. to 4:00 p.m. during the period identified in Section 2.7.1. After 4:00 p.m., LICENSEE shall provide, at its sole cost, servicing of permanent restrooms and portable toilet facilities. The number and location of portable toilets shall be determined by consultation with and approval of the CITY.

## 8. SECURITY

8.1 LICENSEE agrees, at its sole expense, to have on duty at all times during events conducted hereunder a sufficient number of fully licensed and qualified peace officers from the San Antonio Police Department serving as security and crowd control officers.

- 8.2 LICENSEE agrees to the selection and designation of a police event commander by the Office of the Chief of Police for the City of San Antonio Police Department. CITY will make reasonable efforts to consult with LICENSEE on the selection of the event commander. The police event commander shall be responsible for the development of a reasonable security and crowd control plan, subject to the approval of the Chief of Police. Additionally, the police event commander will have the responsibility for the reasonable staffing and scheduling of work and the overall supervision of the police activities during the event.
- 8.3 CITY, through the Police Department and the Downtown Operations Department, shall provide the normally scheduled contingent of Police Officers and Park Police Officers in the River Walk area during the events conducted by LICENSEE hereunder, except during emergency conditions or as directed by the Chief of Police or his designee. LICENSEE expressly understands and agrees that CITY, by providing said Police and Park Police service, has not agreed to act and does not act as an insurer of LICENSEE or LICENSEE'S property and does not guarantee security against theft, vandalism or injury of what ever nature and kind to persons and property.
- 8.4 During the event planning and preparation stages, LICENSEE agrees to maintain close liaison with the San Antonio Chief of Police and the Chief of the San Antonio Fire Department or their assigned representatives, so as to assist said officials in carrying out their respective responsibilities in regards to the public safety.
- 8.5 CITY agrees that each year of this contract agreement, at least five (5) days prior to the first day for which LICENSEE shall require security services under this agreement, CITY shall provide a detailed estimate of the total cost of such security. CITY further agrees that within five (5) business days of the final day for which LICENSEE shall require security services for each year, to provide a statement and detailed summary of the cost for security, less fees for the event

commander to LICENSEE. LICENSEE agrees that within ten (10) business days of receipt of said statement, a reimbursement payment will be made by LICENSEE to the CITY for the entire amount of the statement; provided however, in the event that during the ten (10) day period, LICENSEE raises any issues regarding the amount of the statement, the CITY and LICENSEE shall in good faith immediately attempt to resolve such issues and the reimbursement payment shall be made upon such resolution. LICENSEE agrees that it shall be liable for the actual cost of security for the NIOSA event as determined under the collective bargaining agreement between CITY and the San Antonio Police Officers Association in effect at the time of the NIOSA event.

- 8.6 LICENSEE agrees to coordinate and comply with the decisions of the Fire Inspector as designated by the Fire Chief, for compliance with all applicable fire safety codes, standards and or policies, including, but not limited to; Fire Department and fire protection system access, and building occupant loads.

## 9. IMPROVEMENTS AND REPAIRS

- 9.1 LICENSEE shall not construct, or allow to be constructed, any permanent improvements or structures on the licensed Premises nor shall LICENSEE make, or allow to be made, any alterations to the licensed Premises.
- 9.2 Other than as provided herein, LICENSEE shall be responsible for the condition of the Licensed Premises. LICENSEE shall repair any damage to the Licensed Premises caused by LICENSEE, and shall maintain, or cause to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.
- 9.2.1 Repairs to the Licensed Premises as identified by CITY and as agreed upon by CITY and LICENSEE after the EVENT will be initiated and completed by LICENSEE within a timeframe mutually agreed upon by CITY and LICENSEE.

## 10. MAINTENANCE, MANAGEMENT AND CONTROL OF PREMISES

10.1 LICENSEE agrees to hold CITY harmless for any theft, damages, or destruction of signs, goods and/or other personal property of LICENSEE. LICENSEE understands and agrees that all personal property placed by LICENSEE upon the Licensed Premises is at personal risk and expense of LICENSEE and that CITY shall not be liable to LICENSEE or to any other person(s) for loss, theft, vandalism, damage, or injury of any kind to person(s) or property. Furthermore, LICENSEE agrees to remove all of his/her materials and equipment from the Licensed Premises not later than Midnight of the last day of each year of the term hereof, unless otherwise agreed to by CITY and LICENSEE. If the Licensed Premises are not vacated as so provided, then the CITY is hereby authorized to remove from said Lease Premises and to store, at the sole expense of LESEE all signs, goods ware, merchandise, and property of any and all kinds and descriptions which may be occupying the Licensed Premises. The CITY shall not be liable for any damages or loss to such goods, wares, merchandise, or other property which may be sustained by reason of such removal or the place to which it may be sustained by reasons of such removal or the place to which it may be removed. CITY reserves the right to sell such property at a public or private sale, without notice and without any liability whatsoever to LICENSEE if such property is not removed from the premises by said last day.

10.2. As to cleanup of the Licensed Premises, the parties agree as follows to trash and refuse collection and disposal.

10.2.1 LICENSEE shall, at all times, keep or cause to be kept the Licensed Premises free of litter, trash, paper and other waste and shall place same in standard trash containers in the street or in other appropriate locations and shall conform with all applicable garbage, sanitary and health regulations of the CITY.

- 10.2.2 Each night of "A Night in Old San Antonio" event and during teardown, LICENSEE will keep bags, boxes, dumpsters, or other containers of trash, debris, garbage, waste, including paper, plastic and other materials placed therein and will accumulate for disposition the remainder of the trash at the location designated by the CITY.
- 10.2.3 LICENSEE will supplement the number of trash containers with liners to the maximum capability to ensure complete clean up for the Licensed Premises each night of said event.
- 10.2.5 LICENSEE or its assigned representative, will provide nightly cleanup of the Licensed Premises, including the removal of waste from inside all booths, all streets, all walkways and alleys and other areas as described in Section 2.1, no later than 7 a.m. in a manner consistent and as collected as part of the nightly trash cleanup and to a level mutually agreed upon by CITY and LICENSEE. Each night after event closing, LICENSEE's cleanup shall include wash of Licensed Premises and capture of water used to be completed no later than 10 a.m. Immediately following the event and after teardown of each area, LICENSEE agrees to pressure wash and return PREMISES to CITY in its original, pre-event condition.
- 10.2.6 LICENSEE shall reimburse CITY for all costs associated with the collection and disposal of trash taken from collection points at the close of each EVENT night; however, during the term and extended term, if any, of the agreement, LICENSEE may elect to utilize private entity to collect and dispose of trash at the close of each event night.

10.2.7 LICENSEE may remove and replace the existing trash compactor from its current location. But in doing so will, at its sole cost and responsibility, provide sufficient capacity for normal garbage disposal for the daily operations of La Villita in a location mutually agreed upon by the LICENSEE and the CITY.

10.2.8 LICENSEE shall ensure that all grease, oil, charcoal and other cooking components are transported stored and disposed of properly each event night. This shall include verifying the inventory of grease and other cooking oils to make certain that all grease and cooking oil is properly disposed. LICENSEE shall prohibit the dumping of grease or other cooking oils into the City's sinks, common storm or sanitary sewers, flower beds, sidewalks, or driveways.

10.3 CITY shall be responsible for sidewalk and paver repairs other than those necessitated by the actions of LICENSEE, as required conforming to safety and aesthetic standards.

10.4 LICENSEE will, at the termination of this License Agreement, return the Licensed Premises to CITY in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only excepted.

10.5 LICENSEE shall insure that all drinks or beverages are dispensed only in plastic or paper containers.

10.6 LICENSEE and CITY support staff:

- 10.6.1 The CITY shall have a plumber physically present on site during each night of the four (4) evenings of "A Night in Old San Antonio" event. In addition, CITY shall have on call during the term hereof, two or more other maintenance personnel, qualified to perform emergency repairs on the physical structure and electrical, water and plumbing systems of the Licensed Premises.
- 10.6.2 A representative of LICENSEE shall remain on the Licensed Premises during the specific dates of the event hereof until performers and the public have left the Licensed Premises.
- 10.7 If CITY fails to provide any personnel or services which it is required to provide under this License Agreement within one (1) hour after notice by LICENSEE of CITY of such failure, then LICENSEE may procure the personnel or services required and deduct the cost thereof from the amounts due CITY under this license agreement or as mutually agreed upon by LICENSEE and CITY.
- 10.8 The LICENSEE shall have the sole right to collect and have custody of articles left on the Licensed Premises by persons attending events conducted hereunder. If left for thirty (30) calendar days, such article shall be deemed abandoned and the LICENSEE may dispose of, donate, and/or sell same at a public or private event without any liability to LICENSEE whatsoever.
- 10.9 LICENSEE agrees that excessive sound from live or mechanically produced sources shall be prohibited and LICENSEE must make or cause to be made necessary adjustments to the sound level immediately upon the request of the CITY. In all cases, LICENSEE shall comply with CITY'S sound control provisions of the San Antonio Municipal Code

- 10.10 LICENSEE will provide at its sole cost and expense, a self-supporting apparatus for the beer distribution lines from the East Nueva street beer staging area into the Maverick Plaza (Frontier Town) dispensing area.
- 10.11 LICENSEE will acknowledge and retain all fenced areas established by the CITY for the protection of bicycle share program property, landscaping, and vegetation. Any removal, encroachment or tampering of fences by LICENSEE, its representatives or assignees will be corrected, replaced or otherwise remedied immediately upon notice, verbal or written, by CITY to LICENSEE.
- 10.12 LICENSEE may only operate standard size 2/4 passenger golf carts and 2 passenger vender motorized carts on following streets:  
King Philip Parkway, Paseo de Villita, Nueva, Presa, and Alamo.
- 10.12.1 Only vehicles approved by the Facilities Operations Coordinator of La Villita and permits issued by the LICENSEE will be allowed on Licensed Premises.
- 10.12.2 LICENSEE will instruct all operators of motorized vehicles during the term of this license agreement of acceptable speeds in the Licensed Premises.
- 10.12.3 In the event of individuals excessively speeding or carelessly operating hereinbefore identified vehicles, the Facilities Operations Coordinator of La Villita and/or the San Antonio Police Department may refuse access to the Licensed Premises to repeated offenders.
- 10.13 Paragraph 21.1 included hereinafter notwithstanding, LICENSEE understands, acknowledges, and agrees that year-round tenants of La Villita have the right during the term hereof, to conduct business in and on their respective Licensed Premises consistent with the terms of their individual leases. For its part, the

CITY will, through the Facilities Operations Coordinator of La Villita, make every good faith effort to insure that said year-around tenants limit their business activities during the term hereof, to the sale of merchandise and/or services specified in their respective lease agreements.

## 11. TAXES AND LICENSES

- 11.1 LICENSEE shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State and local taxes and fees which are now or may hereafter be levied upon the Licensed Premises, or upon LICENSEE, or upon the business conducted on the Licensed Premises, or upon any of LICENSEE'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 event conducted by LICENSEE. Failure to comply with the foregoing provisions shall constitute grounds for termination of this License Agreement by the CITY.

## 12. ASSIGNMENT AND SUBLETTING

- 12.1 Except as to the parent, subsidiary or affiliated company, LICENSEE shall not assign this License Agreement, or allow same to be assigned by operation of law or otherwise, or sublet the Licensed Premises or any part thereof without the prior written consent of CITY which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by LICENSEE without such permission shall constitute grounds for termination of this License Agreement by the CITY.
- 12.2 Without the prior written consent of LICENSEE, CITY shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this License Agreement and in the building and property referred to herein; and to the

extent that such assignee assumes CITY's obligations hereunder, CITY shall, by virtue of such assignment, be released from such obligation.

### 13. DEFAULT AND REMEDIES

13.1 The following events shall be deemed to be events of default by LICENSEE under this License Agreement:

13.2 LICENSEE shall fail to comply with any term, provision or covenant of this License Agreement and,

(a) during the licensed event, a default occurs that is of a nature that threatens public safety or property damage or is a material breach in the operation of NIOSA by LICENSEE, and LICENSEE shall not cure such failure within two (2) hours after verbal notice thereof to LICENSEE through to the Sitting NIOSA Chair or the Sitting San Antonio Conservation Society President by the Facilities Operations Coordinator of the CITY (or if such breach cannot be cured within (2) hours, if LICENSEE does not attempt the cure within the two (2) hours and thereafter diligently pursue such remedy), or

(b) for all other times during the term of this agreement shall not cure such failure within thirty (30) calendar days after written notice thereof to LICENSEE by CITY.

13.3 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this License Agreement, and all rights and interests created by it, terminated. Upon CITY electing to terminate, this License Agreement shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof; or CITY, its agents or attorney may, at its option, resume possession of the Licensed Premises.

13.4 Any termination of this License Agreement as herein shall not relieve LICENSEE from the payment of any sum or sums that shall then be due and payable to CITY hereunder, or any claim for damages then or theretofore accruing against LICENSEE hereunder, and any such sum or sums or claim f or damages by any remedy provided for by law, or from recovering damages from LICENSEE for any default hereunder. All rights, options and remedies of CITY contained in this License Agreement shall be cumulative of the other, and 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 License Agreement. No waiver by CITY of a breach of any of the covenants, conditions or restrictions of this License Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition or restriction herein contained.

13.5 Any breach or violation of the provisions herein contained by the CITY which is not cured within twenty-four (24) hours after written notice thereof is given by the LICENSEE to the CITY or a reasonable effort initiated by CITY to cure such notified defect within twenty-four (24) hours after written notice is given by LICENSEE to the CITY shall, at the option of the LICENSEE, be cause for termination of this Agreement and/or give the LICENSEE the right to seek any remedy which now is or may be provided at law or in equity, whether or not stated herein. All rights, options and remedies of the LICENSEE shall be cumulative of the other. No waiver by LICENSEE of a breach or violation of the provisions herein contained shall be construed or held to be waiver of any succeeding or preceding breach or violation of the same or any other provision.

#### 14. INDEMNIFICATION

14.1 LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors,

volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LICENSEE's activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, LICENSEE or subLICENSEE of LICENSEE, and their respective officers, agents, employees, directors, and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 14.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE' activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

## 15. INSURANCE REQUIREMENTS

- 15.1 Any and all employees, representatives, agents or volunteers of LICENSEE while engaged in the performance of any work required by the CITY or any work related to a Lease of space, License Agreement or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LICENSEE only and not of the CITY. Any and all claims that may result from any obligation for which LICENSEE 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 LICENSEE.
- 15.2 Prior to the commencement of any work under this Agreement, LICENSEE shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CITY's Downtown Operations Department, which shall be clearly labeled "NIOSA" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Downtown Operations Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 15.3 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In

no instance will CITY allow modification whereby CITY may incur increased risk.

15.4 A LICENSEE's financial integrity is of interest to the CITY; therefore, subject to LICENSEE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, LICENSEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LICENSEE's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises/Operations</li> <li>b. Independent Contractors</li> <li>c. Products/Completed Operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> <li>f. Explosion, Collapse, Underground</li> <li>g. Host Liquor Liability</li> <li>h. Liquor Legal Liability</li> <li>i. Damage to property rented by</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000

you	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence

15.5 LICENSEE agrees to require, by written contract, that all subLICENSEES providing goods or services hereunder obtain the same insurance coverages required of LICENSEE herein, and provide a certificate of insurance and endorsement that names the LICENSEE and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the sub-LICENSEE. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

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

City of San Antonio

Attn: Downtown Operations Department

P.O. Box 839966

San Antonio, Texas 78283-3966

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

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- 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;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

15.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, LICENSEE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LICENSEE's performance should there be a lapse in coverage at any time

during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

15.9 In addition to any other remedies the CITY may have upon LICENSEE'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 LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.

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

15.11 It is agreed that LICENSEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

15.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.

15.13 LICENSEE and any SubLICENSEE's are responsible for all damage to their own equipment and/or property.

15.14 All personal property placed in the Licensed Premises shall be at the sole risk of LICENSEE. CITY shall not be liable and LICENSEE waives all claims for damage either to the person or property of LICENSEE due to the Licensed

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 Licensed Premises, or any other persons; due to the happening of any accident in or about said License Premises, except when the same is caused by the gross negligence or willful misconduct of the CITY and/or its elected officials, employees, officers, director, volunteers, or representatives. LICENSEE shall save and hold harmless CITY from any claims arising out of damage to LICENSEE'S business including subrogation claims by LICENSEE'S insurers.

## 16. RULES AND REGULATIONS

- 16.1 LICENSEE shall observe and comply with all laws and ordinances of the CITY affecting LICENSEE'S business, including but not limited to, the CITY'S noise ordinance, green event ordinance, and the provisions concerning operation of businesses in the Downtown Business District.
- 16.2 Only temporary advertisements, signs, decorations or displays shall be placed in, on or about the Licensed Premises. LICENSEE agrees to remove all signs from the Licensed Premises when LICENSEE vacates the Licensed Premises.
- 16.3 No activity or method of operation shall be allowed in, on or about the Licensed Premises which exposes patrons to nudity or to partial nudity.
- 16.4 The operation of a massage business, tanning salon, gambling casino, shall not be allowed in, on, or about the Licensed Premises.
- 16.5 Discrimination on account of race, color, sex, age, handicap or national origin, directly or indirectly, in employment or in the use of or admission to the Licensed Premises is prohibited.

- 16.6 LICENSEE shall not, except as may otherwise be permitted by applicable laws and regulations, pay less than the minimum wage required by Federal and State statutes to persons employed in its operations hereunder.
- 16.7 LICENSEE shall comply with CITY'S laws pertaining to noise. LICENSEE agrees to comply with any requests by the CITY'S park police, San Antonio police officers or noise abatement officers. Such requests shall be limited to instances in which the officers have measured a nighttime noise decibel level at the establishment exceeding the requirements of Chapter 21 of the City Code of the City of San Antonio immediately prior to making such request. Failure to comply with this section may, at CITY'S option, constitute a default under this License Agreement.
- 16.8 LICENSEE shall be responsible for all janitorial responsibilities during the operating hours of this event. Including, but limited to the servicing of public restroom facilities, trash receptacles and general cleanliness of the facilities in use.
- 16.9 CITY will provide electrical circuit breakers panels adjacent in the Licensed Premises in a safe and operable condition. Upon connection to any breaker panel used in the production of this event, LICENSEE will assume responsibility for the condition and safety of all electrical connections, lines and associated equipment used in the production of this event by all individuals under its control. LICENSEE acknowledges that it will return all electrical circuit breakers in the same condition prior to use.
- 16.10 LICENSEE will provide to the Facilities Operations Coordinator of La Villita by April 1 or the first business day after April 1 if applicable, a map identifying the location of all booths, entertainment stages, event entrances, portable toilets, and fixed equipment to be used in the production of the EVENT.

16.11 LICENSEE will provide to the CITY a staging and tear down schedule for the Licensed Premises used for the EVENT.

## 17. RESERVATIONS: CITY

- 17.1 CITY reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspecting or making repairs as herein provided. LICENSEE shall not be entitled to an abatement or reduction of fee consideration by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of LICENSEE from the Licensed Premises. Should construction or other activity by CITY prevent LICENSEE'S use of the Licensed Premises for the purposes outlined herein for longer than ten (10) days, LICENSEE shall deduct from payment to CITY, and with CITY'S approval, the loss of revenue based on the previous years income from the impacted area.
- 17.2 No provision of this License Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments or amusements, or River Walk parades for the benefit of the public outside the licensed premises.
- 17.3 CITY park police, La Villita maintenance staff, and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions, or person that may appear to be suspicious. LICENSEE shall cooperate with all requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as an insurer of LICENSEE'S property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

## 18. CONFLICT OF INTEREST

18.1 LICENSEE acknowledges that it is informed that Texas law prohibits contracts between the CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies, such as CITY-owned utilities and certain CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. LICENSEE certifies (and this License Agreement is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this License Agreement, is an officer or employee of the CITY or any of its agencies.

#### 19. SEPARABILITY

19.1 If any clause or provision of this License Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the parties hereto that the remainder of this License Agreement shall not be affected thereby, and it is also the intention of the parties to this License Agreement that in lieu of each clause or provision of this License Agreement that is illegal, invalid or unenforceable, there be added as a part of this License Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### 20. NOTICES

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

<p>Contract Manager  City of San Antonio  Downtown Operations Department  PO Box 839966  San Antonio, Texas 78283-3966</p>	<p>City Clerk  City of San Antonio  City Hall-Second Floor  P.O. Box 839966  San Antonio, Texas 78283-3966</p>
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Or to such other address, as may have been designated in writing by the CITY from time to time. Notices to LICENSEE shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to LICENSEE at:

<p>Night in Old San Antonio (NIOA)  227 S. Presa  San Antonio, Texas 78205</p>	<p>San Antonio Conservation Society  107 King William  San Antonio, Texas 78204</p>
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Or to such other address on file with the Facilities Manager of La Villita as LICENSEE may provide from time to time in writing to CITY.

**21. OTHER LA VILLITA LEASES AND LA VILLITA TENANTS ASSOCIATION**

21.1 The CITY agrees that it will specifically include, without fail, the following provision, or similar language, in any and all leases of property located within La Villita entered into between the CITY and a third party after the date this License Agreement is executed:

21.1.1 "The CITY reserves the right to grant to the San Antonio Conservation Society or its successor, assigns, or subcontracts, a license to use all or any portion of adjacent property and/or a concession to sell beverages, food, and other items on all or any portion of La Villita, other than premises hereby expressly demised, during specified hours and on these dates in

each year of the duration of this Lease on which the Society may sponsor all or any part of the annual event know as "A Night in Old San Antonio" within La Villita. TENANT expressly recognizes that any right, privilege or leasehold interest granted to the San Antonio Conservation Society for "A Night in Old San Antonio" to La Villita is superior to any such right, privilege or leasehold interest under a separate lease and/or concession contract controlling access as to such right, privilege or leasehold interest granted TENANT under this Lease Agreement, but only during the term specified in the San Antonio Conservation Society's "A Night in Old San Antonio" License Agreement with CITY."

- 21.2 As a condition of this Agreement, the San Antonio Conservation Society, as LICENSEE herein, agrees to coordinate with the La Villita Tenant's Association in the preparation for and conduct of "A Night in Old San Antonio."

## 22. PARTIES BOUND

- 22.1 If there shall be more than one party designated as LICENSEE in this Lease, they shall each be bound jointly and severally hereunder.
- 22.2 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by CITY.

## 23. TEXAS LAW TO APPLY

- 23.1 THIS LICENSE AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

## 24. RELATIONSHIPS OF PARTIES

- 24.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationships between the parties hereto other than that of LESSOR and LICENSEE.

## 25. GENDER

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

## 26. CAPTIONS

- 26.1 The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

## 27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 This License Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LICENSE.
- 27.2 No amendment, modification or alteration of the terms of this License Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

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

## 28. CONTINGENCY

28.1 During each year of the License Agreement, LICENSEE agrees to appropriate and expend funds from La Villita Historic Preservation Fund designated by CITY and LICENSEE on projects related to the preservation and improvement of the La Villita Historical District and other areas as mutually proposed and agreed upon by the CITY, through the Director of the Downtown Operations Department and LICENSEE, through the President of the San Antonio Conservation Society.

28.1.1 LICENSEE shall satisfy the requirement that it expend from the La Villita Historic Preservation Funds for the stated purpose if LICENSEE appropriates, expends or irrevocably pledges the required funds for the stated purpose during this AGREEMENT. Any unused funds that may exist at the termination of this agreement shall be appropriated and expended by LICENSEE as required in this AGREEMENT.

28.1.2 All such La Villita Historic Preservation Funds shall remain in the custody of the LICENSEE until appropriated or expended. LICENSEE shall confer with the Director of Downtown Operations Department of the City of San Antonio regarding the purposes and/or projects for which the funds will be appropriated or expended and shall obtain the approval of the Director for such expenditures.

28.1.3 LICENSEE shall provide written records documenting the expenditure of funds as reasonably requested by the Director of Downtown Operations Department of the City of San Antonio.

28.1.4 In the event of cancellation or termination of the License Agreement, LICENSEE shall have no further liability for the expenditures set forth in Section 28 of this agreement except for events which occurred prior to the date of such termination or cancellation, and the appropriation and expenditure of any remaining funds due or accrued in this AGREEMENT, or any liabilities incurred by LICENSEE.

28.2 For purposes of CITY'S audit and corroboration of amounts payable to the CITY, LICENSEE shall retain all records relative to each year's "A Night in Old San Antonio" event for a period of not less than twelve (12) months.

28.2.1 CITY retains the right to request a complete financial report and audit, prepared by a certified public accountant, showing all funds received for this event and the manner in which such funds were disbursed or expended. Report and audit shall include a statement that all LICENSEE's payments comply with the requirements and provisions of this License Agreement.

## 29. AUTHORITY

29.1 The signer of this License Agreement for LICENSEE hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of LICENSEE.

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

CITY OF SAN ANTONIO, a Texas  
Municipal Corporation

LICENSEE: San Antonio Conservation Society

\_\_\_\_\_  
Sheryl Sculley  
City Manager

Signature: Nancy H. Avellar  
Printed Name: Nancy H. Avellar  
Title: President

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

