

CONSENT AGENDA
ITEM NO. 34

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

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa B. Vossmer; Finance; Management and Budget; Legal; File

SUBJECT: Ordinance Authorizing a License Agreement for Use of Hemisfair Park for a Fundraising Event to be Held by the American Cancer Society and Authorizing a Temporary Street Closure

DATE: October 24, 2002

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Director of Parks and Recreation to execute a one-time license agreement with the American Cancer Society for use of Hemisfair Park in City Council District 1 for the Cattle Baron's Gala, a fundraising event, and authorizes a temporary street closure of a portion of Alamo Street for the event.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The American Cancer Society conducts an annual fundraising event called the Cattle Baron's Gala. This year they have requested to utilize Hemisfair Park for the event, which will be held on Saturday, November 9, 2002. They will set up their event in several of the large open areas in Hemisfair Park and will have entertainment, catering and fundraising activities, such as a silent auction.

In order to accommodate the set up of a stage and other preparations, a portion of South Alamo Street from Durango to Nueva Street will be closed. This will affect one northbound lane from 8:00 a.m. until midnight, and all northbound lanes from 3:00 p.m. until midnight, on Saturday, November 9th. Staff has coordinated the event with leaseholders in the area, Police/Traffic Division, Public Works/Streets and Convention Facilities.

In consideration of this approved license agreement, the American Cancer Society will pay the City a reservation fee of \$1,500.00. In addition, a cash clean up/damage deposit of \$10,000.00 will be paid. The agreement is for the specified event only and will not be utilized for other

dates or events. It stipulates that American Cancer Society will pay for all costs associated with the event, including security, clean up, utilities, barricades, traffic control, etc.

POLICY ANALYSIS

This action follows the policy of obtaining City Council approval for license agreements and for temporary street closures.

FISCAL IMPACT

Revenue of \$1,500.00 will be collected and deposited into the City's General Fund. This is the fee established in the City Code for Hemisfair Park special events conducted by non-profit groups. All costs associated with the event will be paid by the American Cancer Society.

COORDINATION

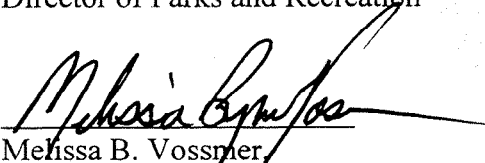
The City Attorney's Office and Asset Management have reviewed the license agreement. Public Works, Police, Convention Facilities and area leaseholders have been consulted.

SUPPLEMENTARY COMMENTS

The Discretionary Contracts Disclosure Form completed by American Cancer Society is attached.

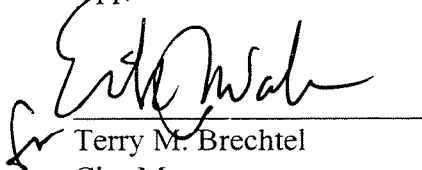


Malcolm Matthews,
Director of Parks and Recreation



Melissa B. Vossmer,
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

City of San Antonio
Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1&2

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

N/A

(2) the identity of any business entity that would be a party to the discretionary contract and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

American Cancer Society, San Antonio Metro Unit

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made: N/A	Amount: 	Date of Contribution:
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Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

N/A

Signature: Janice Darling	Date: 10-11-02
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¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

LICENSE AGREEMENT
FOR THE USE OF A PART OF HEMISFAIR PARK FOR THE
2002 CATTLE BARON'S GALA

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 No. _____ passed and approved on the _____ day of _____, 2002, (hereinafter referred to as "CITY"), and **AMERICAN CANCER SOCIETY**, a Texas Non-Profit Corporation, (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 of the license 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 "The 2002 Cattle Baron's Gala" the right to use and occupy the Premises as identified below and as shown on Exhibit A, during the indicated dates and times:

1.1.1 Hemisfair Park Archway Park, including the Gazebo Area

1.1.2 The Old Goliad St. from the Hemisfair Park Arch up to and including Plaza Mexico

1.1.3 Hemisfair Park Clock Tower Plaza

1.1.4 Alamo St. Parking Lot: Any unallocated spaces in the Alamo St, Children's Playground parking lot on November 9, 2002 from 5:00 p.m. to 12:00 midnight

1.1.5 Streets/Walkways November 9, 2002:

1.1.5.1 Goliad Street: including both its north and south sidewalks

1.1.5.2 South Alamo Street: the curbside northbound lane and the north sidewalk, from the east curbline of South Alamo Street in front of Beethoven Hall to the east curbline north of the intersection with Nueva Street. All northbound lanes of North Alamo Street may be closed to vehicular traffic from 3:00 p.m. to 12:00 a.m.

LICENSEE agrees to abide by all SAPD requirements, including the requirement to place four (4) off-duty SAPD traffic officers for the South Alamo Street closure and remit payment for said services to SAPD

1.2 LICENSEE understands that Buildings 300 and 235 (front and rear upstairs and downstairs), including porches and/or overhangs are a part of the

premises leased to year-around tenants of Hemisfair Park 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 by the Director of Parks and Recreation (Director). Such authorization shall not be granted by the Facilities Operations Manager in Hemisfair Park without the full knowledge and written consent of the year-around tenants of the aforelisted buildings.

- 1.3 Except for the provisions of Section 1.1 and 1.2, included hereinbefore, the Licensed Premises shall be occupied and used exclusively by LICENSEE for the operation of the event known as "The 2002 Cattle Baron's Gala", and for no other purpose without the written consent of the CITY for the following inclusive dates:

1.3.1 Dates and Hours for the event:

1.3.1.1

Days of Setup:	November 7 and 8, 2002	8:00 a.m. to 10:00 p.m.
	November 9, 2002	8:00 a.m. to 5:00 p.m.
Day of Event:	November 9, 2002	5:00 p.m. to 12:00 a.m.
Day of Teardown:	November 10, 2002	8:00 a.m. to 10:00 p.m.

- 1.3.2 "The 2002 Cattle Baron's Gala" Hours of Event: Beginning at 5:00 p.m. to 12:00 p.m. November 9, 2002.

2. CONSIDERATION

- 2.1 In consideration of this License and for CITY'S granting LICENSEE concession rights to produce this annual event, the following fees:

LICENSEE promises to pay to the CITY \$1,500.00 plus a cash damage deposit of \$10,000. LICENSEE shall also pay any CITY fees or permits required for the closure of Alamo St. from north of Durango to Nueva St. This shall include the remittance fees necessary for the placement and removal of barricades and signs as required by the San Antonio Police Department.

- 2.2 In addition thereto, 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.

2.2.1 CITY and LICENSEE shall inspect and review all buildings, improvements and general site conditions made available for use by LICENSEE and acknowledge prior to use and after the event, the condition of furniture and note damages and changes to the condition of said furniture.

2.2.2 LICENSEE agrees to reimburse CITY at fair market value for any damaged and/or lost city equipment and property.

3. USE OF PREMISES

3.1 The PREMISES shall be occupied and used by LICENSEE solely for the operation of the event known as the "2002 Cattle Baron's Gala". 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 persons or person it deems objectionable.

3.2 LICENSEE agrees to insure that exhibitors, entertainers and individuals under its control are authorized by it to participate in the "2002 Cattle Baron's Gala" 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 1.2.

3.3 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 this 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.

4. TERM AND TERMINATION

- 4.1 The term of this License Agreement is for a one (1) month period beginning on date of execution and ending on December 1, 2002, provided that occupation of the premises is limited to the dates and times identified above. The right is expressly reserved to the CITY, acting through the City Council, to terminate this Agreement for the Following:
- 4.1.1 In the event this License Agreement is deemed by a court of competent jurisdiction to be inconsistent with the public use.
- 4.2 In the event of termination by City Council in relation to Section 4.1 above, the CITY shall give LICENSEE notice in writing at least ten (10) days prior to the termination date.
- 4.3 In the event of cancellation by LICENSEE, LICENSEE shall have no further liability for any rental payments under this License Agreement, except for accrued and unpaid rent for events occurring prior to such termination.

5. ACCEPTANCE AND CONDITION OF PREMISES

- 5.1 Prior to the 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.**
- 5.2 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 herein or made a part hereof by specific reference herein.

6. UTILITIES AND PORTABLE TOILET FACILITIES

- 6.1 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 herein 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 expenses therefore.
- 6.2 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 shall submit a site plan to the Director or his designee, 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.
- 6.2.1 All electrical lines at ground level will be properly identified, secured and covered where exposed to the public in an effort to insure appropriate safety conditions.

7. SECURITY

- 7.1 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 Park Police Department serving as security and crowd control officers.
- 7.2 CITY, through the Park Police Division, shall provide the normally scheduled contingent of Park Police Officers in the Hemisfair Park Walk area during the event conducted by LICENSEE hereunder. LICENSEE expressly understands and agrees that CITY, by providing said 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.

- 7.3 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 load.

8. IMPROVEMENTS

- 8.1 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.

- 8.2 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 caused to be maintained, the Licensed Premises in a clean, neat, attractive and sanitary condition.

8.2.1 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.

9. MAINTENANCE, MANAGEMENT AND CONTROL OF PREMISES

- 9.1 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 the event, 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.

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

9.2.1 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.

9.2.2 LICENSEE will keep in bags, boxes, dumpsters, or other containers all trash, debris, garbage, waste, including paper, plastic, and other materials placed therein and will accumulate for disposition the remainder of the trash at the sole cost and expense of LICENSEE.

9.3 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.

9.4 LICENSEE and CITY support staff:

9.4.1 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.

9.5 The City shall have the sole right to collect and have custody of articles left on the Licensed Premises by person attending events conducted hereunder. If left for thirty days, such article shall be deemed abandoned and the CITY may sell

same at a public or private event without any liability to LICENSEE whatsoever.

9.6 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 security officers(s) on duty. In all cases, LICENSEE shall comply with CITY'S sound control ordinance as mandated by Ordinance No. 62550, dated March 20, 1986.

9.7 LICENSEE will restrict vehicular traffic to designated streets only. The use of vehicles, including but not limited to, golf carts and motorized service carts on alleys and walkways within the Licensed Premises will be restricted to those areas mutually agreed upon by LICENSEE and the Director.

9.7.1 LICENSEE will instruct all operators of motorized vehicles during the term of this license agreement of acceptable speeds in the Licensed Premises.

9.7.2 In the event of individuals excessively speeding or carelessly operating hereinbefore identified vehicles, the CITY may refuse access to the Licensed Premises to repeated offenders.

9.8 LICENSEE understands, acknowledges, and agrees that year-around tenants of Hemisfair Park 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, 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.

10. TAXES AND LICENSES

10.1 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.

11. ASSIGNMENT AND SUBLETTING

11.1 Except as to the parent, subsidiary or affiliated company, LICENSEE shall not assign this Lease, or allow same to be assigned by operation of law or otherwise, or sublet the Licensed Premises or any part thereof. Any assignment or subletting by LICENSEE without such permission shall constitute grounds for termination of this Lease by the CITY.

11.2 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 Lease 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.

12. DEFAULT AND REMEDIES

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

12.2 LICENSEE shall fail to comply with any term, provision or covenant of this License Agreement and during the licensed event: shall not cure such failure within twelve (12) hours after written notice thereof to LICENSEE by CITY.

12.3 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.

12.4 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 for 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.

12.5 Any breach or violation of the provisions herein contained by the CITY which is not cured within Twelve (12) 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 hours (24) 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.

13. INDEMNIFICATION

13.1 LICENSEE 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 LICENSEE'S activities under this AGREEMENT, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, 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. LICENSEE shall promptly advise the CITY in writing of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'S 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.

13.2 LICENSEE 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.

14. INSURANCE REQUIREMENTS

14.1 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 use of space 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.

14.2 Prior to the commencement of any work under this AGREEMENT, LICENSEE shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and Recreation Department and City Clerk's Office, 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 AGREEMENT until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department and the City Clerk's Office, 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 effective period of the License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the License Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

14.4 A LICENSEE'S financial integrity is of interest to CITY, therefore, subject to LICENSEE'S right to maintain reasonable deductibles in such amounts as are approved by CITY, LICENSEE shall obtain and maintain in full force and effect for the duration of the License Agreement, and any extension hereof, at LICENSEE'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 and Employers Liability for paid employees	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury g. Explosion, collapse, underground h. Liquor Host Liability i. Liquor Legal Liability	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence or its equivalent
3. Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence or its equivalent
4. Property Insurance: For physical damage to the property of LICENSEE, including improvements and betterment to the Licensed Premises	Coverage for a minimum of eighty percent (80%) of the replacement cost of LICENSEE'S property

14.5 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 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 LICENSEE shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

14.6 LICENSEE agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

14.6.1 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 and professional liability policies;

14.6.2 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;

14.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.

14.7 LICENSEE 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

14.8 If LICENSEE 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 License Agreement. Procuring of said insurance by the CITY, however, is not the exclusive remedy for failure of LICENSEE to maintain said insurance or secure said endorsements. 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 payments(s) which become due to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.

14.9 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 subcontractors' performance of the work covered under this License Agreement.

15. RULES AND REGULATIONS

- 15.1 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 and the provisions concerning operation of businesses in the Downtown Central Business District.
- 15.2 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.
- 15.3 No activity or method of operation shall be allowed in, on or about the Licensed Premises which exposes patrons thereof to nudity or to partial nudity.
- 15.4 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.
- 15.5 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.
- 15.6 LICENSEE shall comply with CITY'S laws pertaining to noise. LICENSEE agrees to comply with any requests by the CITY'S park 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.
- 15.7 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.

15.8 CITY will provide electrical circuit breakers panels adjacent in the Licensed Premises in a safe and operable conditions. 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.

15.8.1 LICENSEE acknowledges that it will return all electrical circuit breakers in the same condition prior to use.

15.9 LICENSEE will provide to the Director fifteen days (15) prior to the date of this event, a map identifying the location of all tables, booths, entertainment stages, event entrances and fixed equipment to be used in the production of this EVENT.

15.10 LICENSEE will provide to the CITY a staging and tear down schedule for the demised premises used for the event.

16. RESERVATIONS: CITY

16.1 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.

16.2 No provision of this License Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments or amusements, or parades for the benefit of the public outside the licensed premises.

16.3 CITY park police, Parks Department 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 reasonable requests by such personnel to facilitate public safety and orderly conduct by persons in the Hemisfair Park 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.

17. CONFLICT OF INTEREST

17.1 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.

18. SEPARABILITY

18.1 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.

19. NOTICES

19.1 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:

Contract Services Manager
City of San Antonio
Parks and Recreation Department
115 Plaza De Armas, Suite 260
San Antonio, Texas 78283-3966

City Clerk
City of San Antonio
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the CITY OF SAN ANTONIO from time to time. Notices to LICENSEE shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, addressed to LICENSEE at:

American Cancer Society
8115 Datapoint Dr.
San Antonio, Texas 78229

or to such other address on file with the Director as LICENSEE may provide from time to time in writing to CITY.

20. PARTIES BOUND

20.1 If there shall be more than one party designated as LICENSEE in this Lease, they shall each be bound jointly and severally hereunder.

20.2 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.

21. TEXAS LAW TO APPLY

21.1 **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.**

22. RELATIONSHIPS OF PARTIES

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

23. GENDER

23.1 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.

24. CAPTIONS

24.1 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.

25. ENTIRE AGREEMENT/AMENDMENT

25.1 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 LICENSEE.

25.2 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.

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

AUTHORITY

26.1 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 _____, 2002.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

By: _____
Director of Parks and Recreation

ATTEST:

_____ City Clerk

LICENSEE:

AMERICAN CANCER SOCIETY,
A Texas Non-Profit Corporation

By: Janice Dailing
Title: Executive Director

APPROVED AS TO FORM: _____ City Attorney

Exhibit A

