

**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:** Christopher J. Brady; Finance; Management and Budget; Legal; File

**SUBJECT:** License Agreement with the Paseo Del Rio Association, Inc. for Use of the City's River Walk and Management of Novelty Vendors on the River Walk

**DATE:** March 4, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes execution of a five-year License Agreement with the Paseo del Rio Association, Inc. (PDRA) for the use of a portion of the City's River Walk for special events to promote the River Walk and for management of novelty vendors on the River Walk, with a license fee payment of \$20,000.00 in Year 1 which increases each year by 2% to \$21,649.00 in Year 5.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

The Paseo del Rio Association, Inc. (PDRA) has utilized the City's public space on the River Walk for special events designed to promote the River Walk as an attraction since 1969. This non-profit trade organization, comprised of businesses and entities on the River Walk, utilizes the proceeds from these special events to fund activities designed to attract both tourists and residents to the River Walk. PDRA is a central point of contact for promotion of the River Walk and its businesses. Through the years, events coordinated by PDRA have promoted the River Walk and the downtown area by bringing regional and national recognition to the area. The Holiday River Parade, PDRA's largest event that it coordinates, is televised in several cities throughout the nation.

Most recently, Ordinance 88603 passed and approved on October 8, 1998 authorized a five-year License Agreement. Since August 2003, the City and PDRA have been operating under a month to month agreement, pending final negotiation of business points and development of vendor policies, as noted below. The PDRA has requested a renewal of the agreement for a term of five years, beginning April 1, 2004 and ending on March 31, 2009, so that it will coincide with their new fiscal year. If requested by PDRA, the agreement may be extended and renewed for an

additional five-year term if approved by City Council. The City reserves the right to negotiate contract terms and fees for the extended contract period. Staff supports the new agreement with some contract changes.

In the new agreement events are authorized and classified in two categories. Class A events are large scale events with attendance estimated at 10,000 or more. Only three of these are permitted during the year. Class B events are all other events and have attendance estimated at less than 10,000. Scheduled and approved events are as follows:

<u>No.</u>	<u>Event Description</u>	<u>Month</u>	<u>Class Type</u>
1.	Mud Festival	January	B
2.	River Walk Mardi Gras	February	B
3.	St. Patrick's Day River Dyeing	March	B
4.	Fiesta Mariachi Festival	April	B
5.	Rhythm on the River	August	B
6.	Pachanga del Rio	September	B
7.	Texas Country Festival	September	B
8.	Halloween Festival	October	A
9.	Holiday River Parade & Tree Lighting	November	A
10.	Fiesta de las Luminarias	December	A
11.	River Art Fair	December	B
12.	Las Posadas	December	B
13.	Caroling on the River	December	B

Additional events may be requested with 90 days notice to the Director of Parks and Recreation, who may approve the additional event but is not obligated to do so.

The PDRA is responsible for promotion, set-up, maintenance and takedown costs associated with these special events. The Holiday River Parade and tree lighting is an exception, with the City providing the hanging of the lights, providing some security for the event and installing fencing to protect planter beds, at an annual cost of approximately \$45,450.00. PDRA purchases lights annually at a cost of about \$20,000.00, invites and coordinates participants for the parade, coordinates the barge line-up, promotes and markets the event, secures televising of the event and manages ticket sales for seating.

Under the terms of the new license agreement, the PDRA will pay a flat rate each year, beginning at \$20,000.00 for the first full year and increasing by 2% each year. The recently expired agreement required 10% of net revenue or a minimum amount of \$12,000.00, which had increased from a minimum amount of \$10,000.00 in the first contract year. The average annual payment to the City for the past five years has been \$15,561.00. The flat rate of \$20,000.00 is a reasonable amount, considering the work by PDRA on these events which promote the River Walk and mutually benefit the City's tourism industry. The nominal increase each year is also in consideration of the promotional work by PDRA. Only two of the PDRA events collect revenue from the public. One is the Pachanga del Rio, which is a ticketed event, and the other is the Holiday River Parade, which has some ticketed seating areas.

In the past, there have been complaints about the quality of goods sold during art events along the River Walk. The PDRA events that include art shows are the Mud Festival, River Walk Mardi Gras, Rhythm on the River and River Art Fair. There is stronger language in the new agreement that requires higher quality and appropriate merchandise to be sold during art events. Food, beverages and merchandise offered for sale must be of good quality and prices must be comparable to prices charged in the private marketplace for similar items. Arts and crafts will be approved by a committee established by PDRA "to verify the quality and caliber of arts and crafts presented to the public." The City and PDRA will determine "a quality standard that highlights art and crafts of the region and provides enjoyment and value to the public." Booth layout and decor for these activities will follow standards jointly determined by the Director of Parks and Recreation and PDRA.

Additionally, River Walk vendors have been an ongoing administrative concern to Parks and Recreation staff who monitor the safety and use of public space on the River Walk. Vendors consistently travel into public walkways and often do not have permission to vend on private or leased property. PDRA and the City have developed a River Walk novelty vending and mariachi management program. The new program establishes rules and regulations for vending activities that will be administered by PDRA, as shown on Exhibit 1. PDRA will issue permits and collect a permit fee dedicated to the administration of this program. Vendors will apply through restaurants or businesses that want to allow vending on their property. A quarterly permit fee will be \$175.00 per vendor for each requested location. This can be compared to the current downtown peddler permit of \$350.00 per year that the Parks and Recreation Department issues in some specific downtown locations or the working artist fee at Market Square and La Villita of \$275.00 per month/\$3,300.00 per year. A list of approved vendors for established permanent locations will be provided to the City. No roving retail vendors or mariachi/musical groups will be allowed on the River Walk public right of way because of crowd flow and safety concerns. Park Police will inspect vendors on the River Walk for PDRA permits and may issue citations for vendors not authorized to vend or for vending in illegal and/or unapproved locations. The established fine if convicted of this Class C Misdemeanor violation is from \$100.00 to \$2,000.00. This ordinance includes an amendment to Section 35-679 (e) of the City Code to incorporate the new River Walk vendor policy.

### **POLICY ANALYSIS**

PDRA has utilized the City's public space on the River Walk for these special events since 1969. Most recently, Ordinance 88603, passed and approved by the City Council on October 8, 1998, authorized a License Agreement with the PDRA. This new ordinance, authorizing an agreement with PDRA for an additional period, is consistent with these prior actions.

### **FISCAL IMPACT**

Under the proposed License Agreement, the PDRA will pay the City a flat rate of \$20,000.00 for the first full contract year, which begins April 1, 2004. This rate will increase each subsequent

year by 2%. The annual payment can be paid in advance or quarterly. Payments for each contract year are as follows:

Year 1	\$20,000.00	Year 4	\$21,224.00
Year 2	\$20,400.00	Year 5	\$21,649.00
Year 3	\$20,808.00		

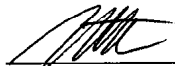
All proceeds from this License Agreement are deposited into the City's General Fund. The City has annual operational expenses associated with the Holiday River Parade of approximately \$45,450.00, which have been incorporated into the General Fund as an annual expenditure.

### **COORDINATION**

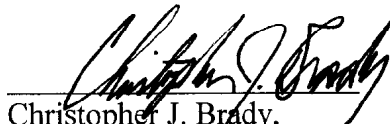
The development of this License Agreement was coordinated with the City Attorney's Office, Historic/Design Review Office and Asset Management.

### **SUPPLEMENTARY COMMENTS**

An Ethics Ordinance disclosure statement completed by Paseo del Rio Association is attached.



Malcolm Matthews,  
Director of Parks and Recreation



Christopher J. Brady,  
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;

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(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;

PASCO del Rio Association
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(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;

None
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(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.

None
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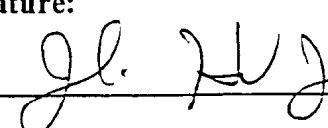
**Political Contributions**

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.

<b>To Whom Made:</b>  None	<b>Amount:</b>  	<b>Date of Contribution:</b>  
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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 question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Jack Heddon, Jr. President	
<b>Signature:</b>  	<b>Date:</b>  10-22-03

<sup>1</sup> 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**  
**(San Antonio River Festivals and Special Events)**

This Agreement is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter called "CITY"), acting by and through its City Manager pursuant to Ordinance No.\_\_\_\_\_, 2004, and the **PASEO DEL RIO ASSOCIATION, INC.** a Texas 501(c)4 corporation (hereinafter called "LICENSEE"), acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors. As mutually agreed to by both parties to further preserve and advance the promotion, history and enjoyment of the San Antonio River Walk by residents and tourists alike.

**1. GRANT OF LICENSE**

1.1 CITY, for and in consideration of the payment of the License fees set forth and the covenants and agreements hereinafter contained, does hereby grant to LICENSEE the non-exclusive right to use, for the events hereinafter mentioned and for future events scheduled in accordance with the provisions of Paragraph 1.4 and 1.6 hereinafter, public property in the downtown River Walk area as further described on the diagram attached hereto and incorporated herein as EXHIBIT A (hereinafter called the "Premises"). Excluding the use of public properties in aforesaid area which are covered by River Walk Lease Agreements or Downtown San Antonio River Boats and Barges Concession Agreements as authorized and approved by City Council and excluding use of the Convention Center turn-around basin and the Arneson River Theater and its associated concession stand. The use of the Arneson River Theater and its associated concession stand may be arranged and fees paid by LICENSEE for events authorized herein. However, arrangements for such use will be pursuant to CITY policy covering short-term licensing for use of La Villita, the Cos House, and the Arneson River Theater. The use of the Convention Center turn-around basin may be arranged by LICENSEE through coordination with City's Director of Convention Facilities.

1.2 Should LICENSEE desire to use non-public property or public property leased to others on the River Walk, it shall be LICENSEE'S sole responsibility to arrange such use with the owner(s) and lessee(s) thereof. CITY agrees to provide LICENSEE with a list of public properties on the River Walk which are leased to non-CITY businesses or other non-CITY entities and further agrees to update said list as changes occur.

1.3 Should the conduct of events authorized herein involve use of or need for river barges, it shall be LICENSEE'S sole responsibility to make necessary arrangements with the City's boats and barges



No.	Event Description	Month	Class Type
13.	Caroling on the River	December	Class B

1.5 LICENSEE shall notify CITY, in writing, of specific dates and times for foregoing events at least sixty (60) calendar days in advance of each event. CITY agrees to respond with confirmation of event dates and times within fifteen (15) days of receipt thereof. It is further understood that CITY may require date changes if circumstances dictate such changes, in which event CITY shall notify LICENSEE of the date changes and reasons necessitating the rescheduling no later than thirty (30) days in advance of the requested date(s).

1.6 It is understood that other events not listed hereinbefore may be held by LICENSEE on the Premises during the year. LICENSEE shall submit notification of such unlisted events in writing to the Director, Department of Parks and Recreation hereinafter called "Director", at least ninety (90) days prior to date of proposed event. CITY agrees to respond to such requests within thirty (30) days of receipt thereof. Nothing herein shall be construed to suggest or imply any obligation by CITY to approve such unlisted events.

1.7 CITY reserves the superior right to conduct or to authorize the conduct of special events or activities on the Premises. CITY agrees to coordinate details of such special events or activities with LICENSEE. CITY also agrees to require other special event or activity sponsors and/or licensees to likewise coordinate with LICENSEE.

1.8 CITY agrees to require other special event or activity sponsors or licensees to maintain the same standards of event presentation as required of LICENSEE by applicable provisions herein including, but not limited to Sections 7, 9, 10 and 11.

1.9 ARTS AND CRAFT SHOWS: LICENSEE agrees to establish a screening and placement process for the selection of artists and craftsman participating in approved arts and crafts shows. LICENSEE shall ensure the high quality of merchandise offered to the public that is hand-made, reflects local and regional arts and crafts, and is displayed in areas that does not inhibit pedestrian traffic. LICENSEE agrees to annually submit for CITY approval a map that identifies areas where approved arts and craft show participants may conduct business in the river walk area. LICENSEE may submit a request for the CITY to approve changes to the approved vendor location map during the term of this agreement.

## 2. DURATION OF LICENSE

2.1 The term of this License Agreement is for a five (5) year period ("Initial Term") beginning on April 1, 2004 and ending on March 31, 2009. So long as LICENSEE is not in default at the end of the initial term,



TENANT may request renewal of the term of this LICENSE AGREEMENT and the LICENSE AGREEMENT may be renewed and extended for a period of five (5) years beginning April 1, 2009 and ending March 31, 2014 ("Extended Term"), subject to approval of the CITY as evidenced by passage of a subsequent ordinance by the City Council of San Antonio. The City Council shall evaluate any such requested renewal in light of all available facts and reserves the right to negotiate terms and consideration for the extended term.

2.2 The Extended Term shall continue on the same terms and conditions set forth herein; provided TENANT notifies CITY of its desire to renew said term no later than 180 days prior to the expiration of the initial term hereof and further provided that TENANT is not then in default hereunder.

2.3 When this AGREEMENT is renewed or replaced by a new contract and a delay should occur in execution of the renewal of a new contract beyond the termination date hereof, and LICENSEE continues to operate as prescribed herein during the period of such delay, all the provisions of this AGREEMENT shall remain in full force and effect during such period, except as may be otherwise authorized by ordinance by the City Council.

### **3. USE OF PREMISES**

3.1 LICENSEE agrees that the Premises shall be utilized for the sole purpose of conducting special events and festivals listed hereinbefore and such other events as may be approved by the Director pursuant to paragraph 1.6. Conduct of such events shall be subject to pre-review by the Director pursuant to Article VII hereinafter and shall be conducted in accordance with applicable statutes, laws, ordinances, and rules and regulations of the United States, the State of Texas, and the City of San Antonio.

3.2 For purposes of Section 21-60 of the City Code of the City of San Antonio only, the events enumerated in Paragraph 1.4 above, or authorized in Paragraph 1.6 above, shall be considered to be co-sponsored by the City of San Antonio.

3.3 Execution of this AGREEMENT by the LICENSEE shall be evidence of the LICENSEE'S compliance with Section 22-143 of the City Code of the City of San Antonio for those events enumerated in Paragraph 1.4 above, or authorized in Paragraph 1.6 above requiring access to the San Antonio River. The CITY will grant access to the San Antonio River by the LICENSEE, within the limitations and requirements of the CITY'S Downtown San Antonio River Barges Concession Agreement. In the course of conducting said events, LICENSEE may sublicense booth space on the Premises for the purposes of food, beverage and

merchandise sales, operate its own food, beverage and merchandise sales booths, provide live entertainment, conduct river parades, and, with the prior written approval of the Director of Parks and Recreation or his designee, sell seats on the Premises for river parades organized and sponsored by LICENSEE. With the exception of the authorized sale of reserved seats for river parades, LICENSEE shall not charge an admission fee for any event conducted on the Premises pursuant to this License, the annual approved Pachanga del Rio event excepted.

3.4 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 a temporary character upon the Premises, including access thereto. CITY reserves the right to enforce all necessary and proper rules for the management and operation of the Premises.

#### **4. ACCEPTANCE AND CONDITION OF PREMISES**

4.1 Prior to each 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, LICENSEE hereby waives any claim for damages that may arise from defects of that character after occupancy. CITY specifically disclaims any warranty of suitability for LICENSEE'S intended commercial purposes.

4.2 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.

#### **5. CONSIDERATION**

5.1 In consideration of this License for use of hereinbefore specified Premises during the term of this License, LICENSEE agrees to pay to CITY for the rights of said License the following:

5.1.1 The following annual amounts which LICENSEE shall pay in either one lump sum in advance or in quarterly installments in accordance with the following payment schedule:

5.1.1.1 Year 1 commencing April 1, 2004, (12 Months): \$20,000 payable in one lump sum in advance or quarterly installments on the following dates:

July 1, 2004:	\$2,000.00
October 1, 2004:	\$4,000.00
January 1, 2005:	\$6,000.00
April 1, 2005:	\$8,000.00

5.1.1.2 Year 2 (12 Months): \$20,400.00 payable in one lump sum in advance or quarterly installments on the following dates:

July 1, 2005:	\$2,040.00
October 1, 2005:	\$4,080.00
January 1, 2006:	\$6,120.00
April 1, 2006:	\$8,160.00

5.1.1.3 Year 3 (12 Months): \$20,808.00 payable in one lump sum in advance or quarterly installments on the following dates:

July 1, 2006:	\$2,080.80
October 1, 2006:	\$4,161.60
January 1, 2007:	\$6,242.40
April 1, 2007:	\$8,323.20

5.1.1.4 Year 4 (12 Months): \$21,224.00 payable in one lump sum in advance or quarterly installments on the following dates:

July 1, 2007:	\$2,122.40
October 1, 2007:	\$4,244.80
January 1, 2008:	\$6,367.20
April 1, 2008:	\$8,489.60

5.1.1.5 Year 5 (12 Months): \$21,649.00 payable in one lump sum in advance or quarterly installments on the following dates:

July 1, 2008:	\$2,164.90
October 1, 2008:	\$4,329.80
January 1, 2009:	\$6,494.70
April 1, 2009:	\$8,659.60

5.2 Said payment shall be payable and submitted to:

Treasury Supervisor  
City Hall Annex  
506 Dolorosa  
San Antonio, Texas 78205

## 6. RECORDS, REPORTS AND AUDIT RIGHTS

6.1 LICENSEE shall maintain, in the City of San Antonio, Texas, books and records reflecting its operations approved in this License in accordance with generally accepted accounting principles. Such books and records, together with any other documentation necessary for verification of LICENSEE'S compliance with

the terms of this License, shall be made available to CITY, on request, through the Director of Finance or his representative. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation.

6.2 LICENSEE shall furnish to CITY such reports pertaining to its operations hereunder, including financial operating statements, certified or notarized in such manner including certification by an independent Certified Public Accountant.

## **7. SUBMITTAL OF APPROVED EVENT PLANS**

7.1 Not later than twenty-one (21) calendar days prior to approved event dates, LICENSEE shall submit to the River Operations Superintendent, or his successor, an event plan that includes, as applicable, the following information:

1. Proposed location of the event
2. Number of proposed booths and/or stands, both sub-licensed and LICENSEE-operated, and the proposed location of each
3. Color scheme, design and size of each booth and/or stand
4. Proposed number and location of spaces for arts and craft show
5. Event start and stop times and dates
6. Generalized list of items and merchandise to be sold
7. Proposed location and size of any signs, posters and/or banners to be used
8. Types and locations of entertainment to be presented
9. Location and type of proposed electrical hookups, trash containers and portable toilets, if applicable and as identified in Section 1.5
10. Security arrangements
11. Location(s) of reserved seats for parades, if applicable

7.2 CITY, through the River Operations Superintendent or his successor, shall review said plans and respond in writing no later than seven (7) calendar days prior to the scheduled event. If the River Operations Superintendent or his successor does not concur with plans as submitted, he/she shall specify his/her objections. LICENSEE agrees to make any reasonable changes necessary to comply with the River Operations Superintendent's requests.

7.3 LICENSEE shall insure that the design and decor of all booths, stands, signs and banners are attractive and in good taste and, when applicable, will utilize graphic design standards as jointly determined by the

Director and LICENSEE. LICENSEE shall further insure that food, beverages and merchandise offered for sale are of reasonably good quality and that prices charged, therefore are comparable to prices charged in the private marketplace for similar food, beverages and merchandise.

7.4 LICENSEE shall insure that all artists and craftsmen approved to participate in LICENSEE'S arts and craft shows shall be approved by a committee established and maintained by LICENSEE to verify the quality and caliber of arts and crafts presented to the public. CITY and LICENSEE agree to mutually determine a quality standard that highlights art and crafts of the region and provides enjoyment and value to the public.

## **8. HOLIDAY RIVER PARADE AND TREE LIGHTING**

8.1 LICENSEE will acquire and prepare light strands and bulbs in advance of light installation under the direction of the Director or his designee for the annual HOLIDAY RIVER PARADE AND TREE LIGHTING event. CITY will then install and remove lights.

8.2 CITY will coordinate the storage of light strands and bulbs with LICENSEE as storage space is available and in a format acceptable to CITY in a location designated by the River Operations Superintendent.

8.3 During the annual holiday river parade, LICENSEE agrees and guarantees that only the areas identified in Exhibit B shall be made available to adjacent restaurants for sale to these restaurants for conversion from public free or reserved seating to paid restaurant dining areas. LICENSEE agrees to maintain seating beginning at Gate 3 and following a route north to the Travis Street Bridge available for public seating.

8.4 LICENSEE shall ensure that prior, during and after the approved parades, that a two-way pedestrian path shall be maintained on the public RIGHT-OF-WAY. No seats or event support equipment shall at any time block pedestrian access. LICENSEE may request of the DIRECTOR to restrict access the date of the parade at a given time to effect security and event setup.

## **9. UTILITIES AND PORTABLE TOILET FACILITIES**

9.1 CITY shall, at no cost to LICENSEE, furnish and maintain in adequate working order all existing electrical power services. LICENSEE may install such additional temporary electrical wiring as it deems necessary to accommodate the needs of the event. However, the location thereof must have prior written approval of CITY, through the Director, and must comply with applicable CITY codes. The cost of all installation and removal of such temporary wiring shall be borne by LICENSEE.

9.2 CITY shall maintain existing public rest room facilities as identified in Exhibit "C", during the period of LICENSEE'S events and in a manner consistent with normal cleaning procedures.

9.3 For CLASS A events, LICENSEE shall provide, at its sole cost, portable toilet facilities in a number to reasonably accommodate the estimated public attendance for each event identified in Paragraph 1.4 and 1.6. The number of portable toilets will be based on historical attendance figures for the same event the year before, and mutually agreed upon by the LICENSEE and Director. For a new event, the estimated number of toilets will be based on similar size events held during the same month the previous year with similar attendance estimates. The number and location thereof shall be in accordance with written directions of CITY, through the Director, and will be provided on a map from LICENSEE to the Director in accordance with the prescribed standards regarding toilet facilities applicable to the specific event. Installation, maintenance and prompt removal of said portable toilet facilities shall be at LICENSEE'S sole expense.

## 10. SECURITY

10.1 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 Office, the San Antonio Police Department, and/or the Bexar County Sheriff's Offices serving as security and crowd control officers. The LICENSEE may supplement these officers with licensed security officers as necessary.

10.2 LICENSEE agrees to submit for approval a security and crowd control plan for events with an anticipated attendance of 10,000 or more persons (CLASS A Events), to the Office of the Chief of Park Police for the City of San Antonio Park Police Department no later than thirty (30) days prior to the start of the event. The Chief of Park Police may amend or modify the submitted plan, at his discretion, and return an approved plan to the LICENSEE no later than ten (10) days prior to the start of the event. In the event the Chief of Park Police fails to return an approved plan to the LICENSEE no later than ten (10) days prior to the start of the event, the plan originally submitted shall be deemed approved. LICENSEE agrees that the number of officers required, their positions, their supervision, and the duration of their assignment during any one such event shall be within the exclusive prerogative of the Chief of Park Police. LICENSEE agrees to comply with the approved security and crowd control plan regarding the number of positions, supervision and duration of assignment. LICENSEE shall remit payment to CITY for all costs and fees association with the implementation of the approved security plan within thirty (30) days receipt of invoice by CITY.

10.3 CITY, through the Police and Department and the Department of Parks and Recreation, shall provide the normally scheduled contingent of Police Officers; Park Police Officers in the River Walk area during the events conducted by LICENSEE hereunder. 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.

## **11. MAINTENANCE, MANAGEMENT, RULES AND REGULATIONS**

11.1 Except for circumstances beyond its reasonable control, CITY shall maintain the Premises in a condition usable for the purposes herein licensed.

11.2 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 Premises is at the sole risk and exposure 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 its materials and equipment from the Premises not later than twenty-four (24) hours following the close of an event, unless otherwise approved by CITY, through the Director. If the Premises are not vacated as so provided, then CITY is hereby authorized to remove from said Premises and to store, at the sole expense of LICENSEE, all goods, wares, merchandise, signs, materials and property of any and all kinds and descriptions which may be occupying the Premises. CITY shall not be liable for any damages or loss to such goods, wares, merchandise, signs, materials or other property which may be sustained by reason of such removal or the place to which it may be removed. Any such goods, wares, merchandise, signs, materials and property left on the Premises for ten (10) days following the last day of any event shall be deemed abandoned and shall become the property of CITY without further notice or liability on CITY'S part.

11.3 By licensing said Premises, CITY does not relinquish the right to control the management thereof and to enforce all necessary and proper rules for the management and operation of the same, and the Director, his/her employees, and any CITY employee or CITY official may enter any or all of the Premises at any time and on any occasion.

11.4 LICENSEE agrees that every employee or agent under LICENSEE'S control shall abide by, conform to, and comply with all of the laws of the United States and the State of Texas, and all ordinances of the City

of San Antonio, and rules and regulations of CITY for the governing and management of said Premises, together with all rules and regulations of the Police, Fire and Health Departments of the City of San Antonio, and will not do, nor suffer to be done, anything on the Premises during the term of this License in violation of any such rules, laws, and ordinances; and, if the attention of LICENSEE is called to any such violation, LICENSEE will immediately desist from and correct such violation.

11.5 LICENSEE shall not make, nor allow to be made, any alterations of any kind to the Premises without the written approval of the Director. LICENSEE shall not injure, mar or deface in any manner said Premises and shall not cause nor permit anything to be done whereby said Premises shall be in any manner injured, marred or defaced; nor shall it drive, or permit to be driven, any nails, hooks, tacks or screws into any finished wall or any part of the Premises; nor shall it use, or permit to be used, any staples, nails, screws or adhesive materials on masonry of buildings.

11.6 LICENSEE shall insure that alcoholic beverages, soft drinks and other beverages are dispensed only in plastic or paper containers.

11.7 During events held by LICENSEE pursuant to this License, LICENSEE will use reasonable efforts to control the conduct of persons attending the event. LICENSEE agrees that CITY will have no responsibility or liability for the acts and conduct of persons on the Premises during such events, other than employees of CITY.

11.8 A representative of LICENSEE shall remain on the Premises during events scheduled hereunder beginning one (1) hour prior to event start time and ending one (1) hour after event stop time.

11.9 CITY shall have on call during events scheduled hereunder one (1) or more maintenance personnel qualified to perform emergency repairs on the physical structures and utility systems of the Premises.

11.10 LICENSEE hereby agrees that no activity, performance, exhibition or entertainment shall be given or held to take place on the Premises herein described which is illegal; and should any exhibition or performance or any part thereof be deemed by appropriate CITY authorities to be illegal, then LICENSEE shall delete or change such portions so that said attractions will comply with the law. LICENSEE agrees, immediately upon receipt by it of such notice, to make such deletions or changes.



11.11 It is understood that the Premises are owned by CITY and that any discrimination by LICENSEE, its agents or employees on account of race, color, sex, age, religion, disability or national origin in the use of or admission to the Premises is prohibited.

11.12 LICENSEE shall coordinate and establish with the River Operations Superintendent, a plan for the cleanup and collection of litter, trash, paper and all other waste during and immediately after conducting events authorized by this License and shall dispose of same in existing and supplemental garbage collection containers.

11.12.1 Except for the Holiday River Parade, LICENSEE will assist the City with cleanup work and assume responsibility to ensure the return of Premises to the same the condition of cleanliness prior to the events identified in Paragraph 1.4 and 1.6. For the Holiday River Parade, LICENSEE shall coordinate with the River Operations Superintendent to establish the cleanup responsibilities between LICENSEE and CITY.

11.13 LICENSEE understands and agrees that a portion of the Premises, at the River Bend area of the River Walk bordering the Hyatt Regency Hotel, is in proximity to a hospital. With respect to such portion of the Premises, excessive sound from live or mechanically produced sources shall be prohibited, and LICENSEE agrees to make, or cause to be made, any and all necessary adjustments to sound level immediately upon request of Park Police or security officer(s) on duty. In all cases, LICENSEE shall comply with CITY'S sound control ordinances, regulations and guidelines, including but not limited to ordinance numbers 83938 and 83939.

11.13.1 In the event that sound levels emanating from any portion of the Premises occupied by LICENSEE exceeds 80 dBA when measured from property under separate ownership, LICENSEE agrees to lower the sound level immediately upon request of CITY Park Police or security officers on duty.

11.13.2 LICENSEE shall keep all public rights-of-way free of any obstructions and shall not allow queuing or waiting of patrons along the River Walk without first obtaining the Director's consent.

## **12. RIVERWALK NOVELTY VENDING AND MARIACHI MANAGEMENT PROGRAM**

12.1 CITY and LICENSEE shall mutually establish a river walk novelty vending and mariachi management program to be approved by CITY and administered by LICENSEE. LICENSEE shall establish rules and regulations for novelty vending on public and private property in the River Walk area in an effort to control

and manage novelty vending and mariachi musicians. CITY and LICENSEE agree to meet quarterly to review and refine this management program so as to ensure the effective management of River Walk novelty vending and mariachi entertainment on the River Walk.

12.2 CITY and LICENSEE shall assume the defined responsibilities in the creation and management of the River Walk novelty vending and mariachi management program:

**12.2.1 Location of Novelty Vendors:** City will consider and approve through the Director or his designee, stationary vendor locations as regularly submitted by PDRA on private property and/or City lease space or right-of-way. City shall not approve any requests for vending on right-of-way as may be prohibited in Section 35-679 or the River Improvement Overlay Ordinance. LICENSEE shall establish and administer the stationary vending program and coordinate with adjacent property owners and through LICENSEE, acknowledgement of approved stationary vending locations. City reserves the right to charge and collect rent for any stationary vendor on city right-of-way.

**12.2.2 Retail Roving Vendors:** No roving vendors shall be allowed by the CITY on the public right-of-way in the river walk area and LICENSEE shall not permit roving vendors. LICENSEE may permit vendors to sell novelties on private property or public leased space; however, solicitation and sales must not occur on public RIGHT-OF-WAY or non-licensed premises. Permitted vendors shall enter and exit each river walk property from the adjacent street entrances. No vendors shall be allowed to walk from one permitted site to another via the river walk sidewalk.

**12.2.3 Permitting Process:** LICENSEE shall establish a quarterly permit fees of \$175.00 per vendor and per each requested location for the administration of the river walk novelty vending program. All approved permit fees and associated surcharges shall be collected by LICENSEE for the sole purpose of recovering LICENSEE'S costs of administration of this program.. LICENSEE shall have the non-exclusive right to establish, permit and administer vending in the river walk area and shall provide quarterly CITY with a list of approved vendors for established locations. LICENSEE shall require PDRA members to submit applications for river walk novelty vending permit(s), remit permit fees and monitor vendor in the private and publicly leased areas.

**12.2.4 Enforcement:** Park Police shall regularly inspect vendors for LICENSEE'S (PDRA) permits on river walk areas. Park Police may issue citations for vendors not authorized to vend or vending in illegal and/or unapproved locations. LICENSEE shall require written acknowledgement by approved licensed

vendors and monitor approved vendors for compliance with approved vending regulations. Property owners shall acknowledge and enforce rules and regulations on river walk vending.

**12.2.5 Mariachis and other musical entertainment:** No solicitation by mariachis shall occur on the public RIGHT-OF-WAY. LICENSEE will license approved mariachi groups, other musical entertainers for placement on private or leased property and approve such locations. Restaurants will only allow musicians to play in approved locations. At no time shall approved mariachis be allowed to block the public RIGHT-OF-WAY for performances.

### **13. LIENS PROHIBITED**

13.1 LICENSEE covenants that it shall not bind, or attempt to bind, CITY for payment of any money in connection with construction, repair, alteration, addition or reconstruction work in, on or about the Premises by LICENSEE.

13.2 LICENSEE hereby agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all authorized improvements of and duly authorized modifications to the Premises, except such as are the responsibility of CITY hereunder, that may hereafter be made during the term hereof, or any extensions of said term. LICENSEE covenants and agrees to fully indemnify and hold harmless CITY against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished to LICENSEE during the performance of such authorized improvements and authorized modifications.

13.3 In the event mechanic's, materialman's or other liens or orders for payment shall be filed against the Premises or improvements thereon, or CITY-owned property located therein, during the term hereof, LICENSEE shall, within thirty (30) days, cause the same to be cancelled and discharged of record, by bond, payment directly or into the registry of an appropriate court, or otherwise in the manner chosen by LICENSEE and at the expense of LICENSEE, and shall also defend on behalf of CITY, at LICENSEE'S sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or order.

### **14. INDEMNIFICATION**

**14.1 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.

14.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by LICENSEE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. 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.

## **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 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 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.

15.3 The CITY reserves the right to review the insurance requirements of this section during the effective period of the Lease 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 Lease Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

15.4 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 Lease 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:

**Table 1: Insurance Specifications**

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence, \$2,000,000 general
	a. Premises/Operations	

	TYPE	AMOUNT
	b. Independent Contractors	aggregate or its equivalent in umbrella
	c. Broad Form Contractual Liability	or excess liability coverage
	d. Products/completed operations	
	e.* Broad form property damage, to include fire	\$50,000
	legal liability	
	f. Personal Injury	
	g. Host Liquor Liability	
3.	Comprehensive Automobile Liability	Combined Single Limit for Bodily
	a. Owned/Leased Vehicles	Injury and Property Damage of
	b. Non-owned Vehicles	\$1,000,000 per occurrence
	c. Hired Vehicles	
4.	Motor truck cargo insurance including loading and	\$1,000,000
	unloading coverage; written on an inland marine form	
	and an all risk basis	
5.	Property Insurance: For physical damage to the	Coverage for a minimum of eighty
	property of LICENSEE, including improvements and	percent 80%) of the actual cash value
	betterment to the Leased Premises	of LICENSEE'S property
6.	Liquor Liability	\$1,000,000 per occurrence, aggregate
		of \$3,000,000

\* Alternate Plans are subject to approval by the Risk  
Manager

\*\* If Applicable

15.5 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.

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

15.6.1 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;

15.6.2 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;

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

15.7 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 Clerks Office  
City Hall-Second Floor  
P.O. Box 839966  
San Antonio, Texas 78283-3966

15.8 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 Lease 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.

15.9 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 Lease Agreement.

15.10 All personal property placed in the Leased Premises shall be at the sole risk of LICENSEE. CITY shall not be liable, and LICENSEE waives all claims for any damage either to the person or property of LICENSEE or to other persons due to the Leased 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 Leased Premises, or any other persons; due to the happening of any accident in or about said Leased Premises. LICENSEE shall save and hold harmless CITY from any claims arising out of damage to

LICENSEE'S property or damage to LICENSEE'S business, including subrogation claims by LICENSEE'S insurers.

## **16. ASSIGNMENT AND SUBLETTING**

16.1 Except as provided herein, LICENSEE shall not assign or sublet this License, or allow same to be assigned by operation of law or otherwise the PREMISES or any part thereof, for any duration whatsoever.

16.2 CITY shall have the right to transfer and assign, in whole or in part, any of its rights under this License and in the property referred to herein; and, to the extent that such assignee assumes CITY'S obligations hereunder, CITY shall, by virtue of such assignment, be released from such obligations.

## **17. DEFAULT AND REMEDIES**

17.1 In addition to any other events of default enumerated elsewhere in this License, the following events shall be deemed to be events of default by LICENSEE under this License:

17.1.1 LICENSEE shall fail to pay any consideration as provided for in this License, and such failure shall continue for a period of ten (10) days after receipt by LICENSEE of written notice from the CITY of past due payment; or

17.1.2 The taking by a court of competent jurisdiction of LICENSEE and its assets pursuant to proceedings under the provisions of any Federal or State reorganization code or act; or

17.1.3 The entry by any court of a final order, with respect to LICENSEE, providing for modification or alteration of the rights of creditors; or

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

17.2.1 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 an approved event by LICENSEE, and LICENSEE shall not cure such failure within two (2) hours after verbal notice thereof to LICENSEE through to the Executive Director of the PDRA or the established PDRA event coordinator by the Director, Park Police, River Operations Superintendent or his designee, of the CITY (or if such breach cannot be cured within two (2) hours, if LICENSEE does not attempt the cure within the two (2) hours and thereafter diligently pursue such remedy);



17.2.2 For all other times during the term of this agreement, if LICENSEE shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LICENSEE'S part to be performed or in any way observed and if such neglect or failure should continue for a period of thirty (30) days after receipt by LICENSEE of written notice of such neglect or failure (except for the failure or neglect to pay any consideration, wherein a ten (10) day period applies); or, if under the thirty (30) day default events, more than thirty (30) days shall be required because of the nature of the default, if LICENSEE shall fail within said thirty (30) day period to commence and thereafter diligently proceed to cure such default.

17.2.3 If the estate hereby created shall be taken by execution or by other process of laws.

17.3 Further, the right is expressly reserved to CITY, acting through the City Council, to terminate this License for the following, which are hereby agreed also deemed to be contingencies which are a condition of default:

17.3.1 In the event this License is deemed to be inconsistent with the best public use of the property, or;

In the event the use of the Premises shall have been deemed a nuisance by a court of competent jurisdiction.

17.4 Upon the occurrence of an event of default as heretofore provided, CITY may, at its option, declare this License, and all rights and interest created by it, to be terminated. Upon CITY electing to terminate, this License shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof. In connection with any such termination, CITY may make, or cause to be made, such repairs to the Premises as CITY shall, in good faith, deem advisable, and the making of such repairs shall not release LICENSEE from liability hereunder.

17.5 Any termination of this License as herein provided shall not relieve LICENSEE from the payment of any sum or sums that shall then be due and payable or become 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 thereunder. All rights, options and remedies of CITY contained in this License 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. No waiver by

CITY of a breach of any of the covenants, conditions or restrictions of this License 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.

17.6 Upon any such expiration or termination of this License, LICENSEE shall quit and peacefully surrender the Premises to CITY; and CITY, upon or at any time after such expiration or termination, may, without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess LICENSEE and remove LICENSEE and all other persons and property from the Premises.

17.7 CITY'S repossession of the Premises shall not be construed as an election to terminate this License, nor shall it cause a forfeiture of considerations or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention is given to LICENSEE by CITY.

17.8 If CITY shall terminate this License or take possession of the Premises by reason of a condition of default, LICENSEE, and those holding under LICENSEE, shall forthwith remove their trade fixtures, signs and other personal property (hereafter collectively "goods and effects") from the Premises. If LICENSEE or any such claimant shall fail to effect such removal within ten (10) days after such termination, then LICENSEE agrees that any such property left shall automatically become the property of CITY, whereupon CITY may, without liability to LICENSEE or those claiming under LICENSEE, remove such goods and effects and store the same for the account of LICENSEE or of the owner hereof at any place selected by CITY, with all costs for said removal and storage to be borne by LICENSEE or, at CITY'S option, CITY may retain or dispose of LICENSEE'S goods and effects, without notice, at private or public sale and without liability to LICENSEE or those claiming under LICENSEE.

17.9 Should CITY default under the terms herein, LICENSEE agrees to give written notice to CITY of such default, and if such default continues for a period of thirty (30) days after receipt of notice, unless CITY is actively pursuing cure of such default, then LICENSEE may pursue any remedy or relief available at law or in equity.

## 18. CONDEMNATION

18.1 It is agreed and understood that in the event the Premises are taken, in whole or in part, by any governmental authority other than CITY, this License, and all rights, title and interest hereunder, shall, at

the option of CITY, cease on the date title to such land so taken or transferred vests in the condemning authority. LICENSEE hereby waives all rights in any proceeds of such condemnation.

## **19. SURRENDER OF PREMISES**

19.1 No act or thing done by CITY or its agents during the term hereby granted shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless the same be made in writing and subscribed by CITY.

## **20. SEPARABILITY**

20.1 If any clause or provision of this License is illegal, invalid or unenforceable under present or future laws effective during the term of this License, then and in that event, it is the intention of the parties hereto that the remainder of this License shall not be affected thereby; and it is also the intention of the parties to this License that in lieu of each clause or provision of this License that is illegal, invalid or unenforceable, there be added as a part of this License 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.

## **21. AMENDMENT**

21.1 This License, together with the authorizing ordinance, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this License shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

## **22. TAXES AND LICENSES**

22.1 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 LICENSEE, or upon the business conducted by LICENSEE on the 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 business conducted by LICENSEE.

## **23. NON-DISCRIMINATION**

23.1 Any discrimination by LICENSEE or his agents or employees on account of race, color, sex, age, religion, disability or national origin in employment practices or in the use of or admission to the Premises is prohibited.

## **24. WAGES**

24.1 If applicable, LICENSEE shall pay wages that are not less than the minimum wages required by Federal and State statutes and City ordinances to persons employed in its operations hereunder.

## **25. NO SUBSTANTIAL INTEREST**

25.1 LICENSEE acknowledges that it is informed that Texas law prohibits contracts between 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 is made in reliance thereon) that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this License, is an officer or employee of CITY or any of its agencies.

## **26. NOTICES**

26.1 Notices to CITY required or appropriate under this License shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to

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

Director,  
Department of Parks and Recreation  
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 the address designated as follows, and shall be presumed delivered as of the third day after the date CITY mails such notice.

Executive Director  
Paseo del Rio Association  
110 Broadway, Suite 60  
San Antonio, Texas 78205

## **27. PARTIES BOUND**

27.1 This License shall be binding upon and inure to the benefit of the parties hereto only and shall terminate upon the dissolution of LICENSEE or its assignees.

## **28. APPROVAL OF CITY**

28.1 Whenever this License calls for approval by CITY, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of Parks and Recreation of the City of San Antonio or his designee.

## **29. RELATIONSHIP OF PARTIES**

29.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of LINCESOR and LICENSEE.

## **30. TEXAS LAW TO APPLY**

30.1 THIS LICENSE 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

## **31. GENDER**

31.1 Words of any gender used in this License 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.

### 32. CAPTIONS

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

### AUTHORITY

32.2 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 \_\_\_\_\_, 2003.

#### LICENSOR:

CITY OF SAN ANTONIO, a Texas Municipal Corporation

By: \_\_\_\_\_  
City Manager

#### ATTEST:

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

#### LICENSEE:

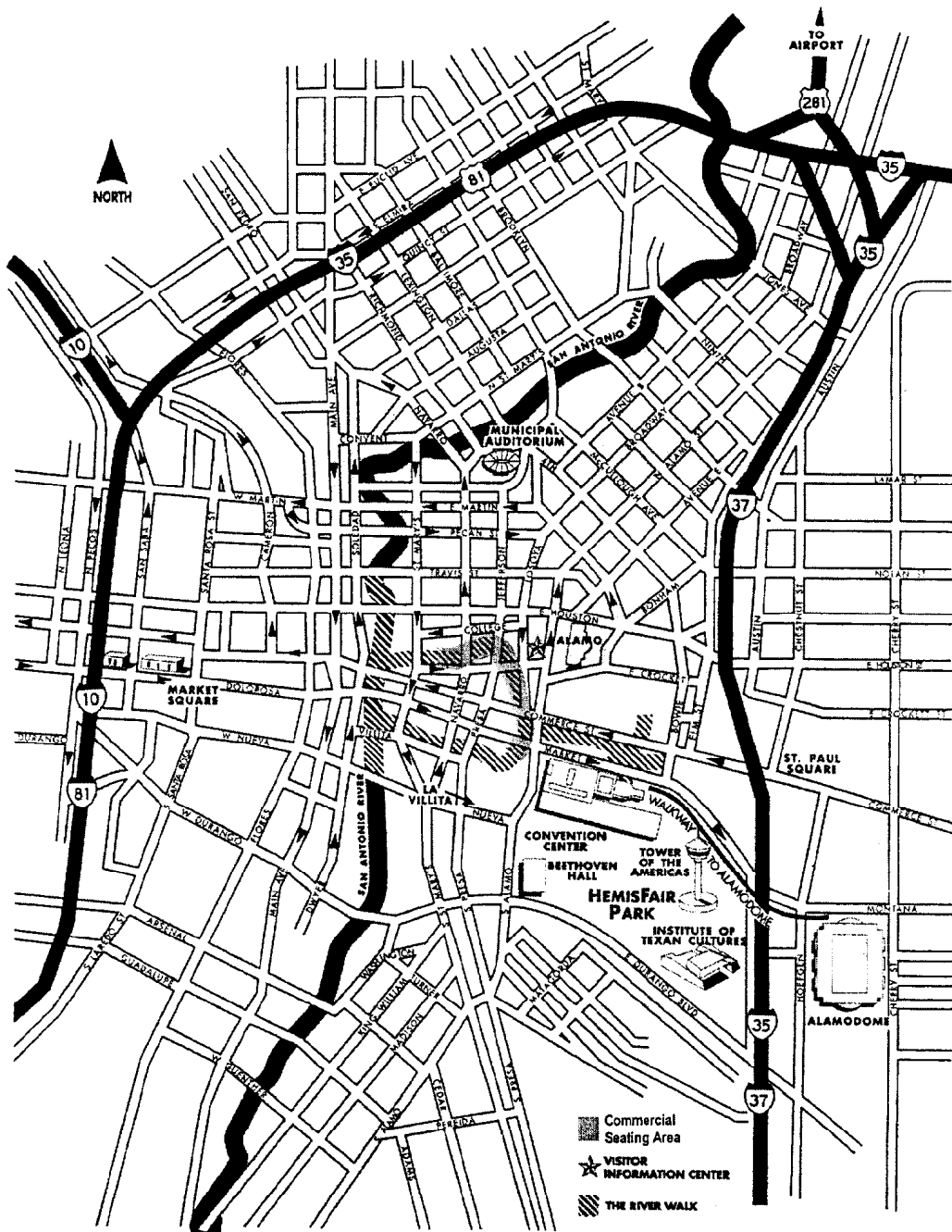
PASEO DEL RIO ASSOCIATION, A Texas Non-Profit Corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_ City Attorney



## Exhibit B





## Summary of City Code and Ordinance References

### Lease Agreement Section 3.2

#### **Sec. 21-54. Vehicular mounted sound amplification systems**

It shall be unlawful for any person operating or controlling a motor vehicle in either a public or private place within the city to operate any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette player, or other similar device in the motor vehicle, in such a manner that, when operated, is audible at a distance of thirty (30) or more feet from the source or, when operated causes a person to be aware of the vibration accompanying the sound in any location outside the confines of the vehicle emitting the sound, noise, or vibration. A culpable mental state is not necessary to constitute a violation of this section

### Lease Agreement Section 3.3

#### **Sec. 21-143. Operation of vessels on the San Antonio River for commercial purposes**

(a) No boat or barge may be operated or launched in the San Antonio River Channel for commercial purposes without approval of the city council expressed in an ordinance expressly identifying the individual, corporation, partnership or other entity authorized to provide such services

(b) For purposes of the foregoing section, the "San Antonio River channel" is defined as the San Antonio River between the city limits and the head waters of the river located at Hildebrand Avenue and Brackenridge Park, together with the Riverbend and all man-made canals connected to the bed of the San Antonio River between these points.

(c) For purposes of the foregoing section, the "San Antonio River channel" is defined as the San Antonio River between the city limits and the head waters of the river located at Hildebrand Avenue and Brackenridge Park, together with the Riverbend and all man-made canals connected to the bed of the San Antonio River between these points.

(Ord. No. 85958, § 1, 5-1-97)

### Lease Agreement Section 11.13

#### **Sec. 21-139. Purpose**

The purpose of this article is to preserve the safety of the visitors to the River Walk area; to reduce the number of people queuing along the River Walk area awaiting entry into a business establishment; and to promote the use of technology to summon waiting patrons to business establishments instead of queuing along the River Walk area

#### **Sec. 21-60. River Walk standards.**

In addition to the foregoing noise regulations, the following acts are declared to be noise nuisances when occurring in the River Walk area and it shall be unlawful for establishments located in the River Walk area, and the owners, managers, or officers thereof:

(1) To place or cause to be placed speakers or amplified music on or near the patio of the establishment or in any other location outside the enclosed building on any side of the premises which can be seen from the San Antonio River;

(2) To create or allow the creation of noise from the establishment which exceeds a decibel level of seventy-two (72) dBA using the A frequency weighting and eighty (80) dBC using the C frequency weighting. This section is intended to prohibit the stated noise levels under both frequency measurements; and

(3) To, if the establishment has been declared a habitual noise nuisance under section 21-57 of this chapter, and in addition to the remedies provided in section (e) thereof, keep any windows and doors to the establishment open after the hour of 10:00 p.m. except as necessary to provide for entry and exit to and from the establishment for a period of ninety (90) days from the date of declaration.

For purposes of this chapter, the term, "River Walk area" shall have the meaning assigned to it in Chapter 35, Article III of this Code. (Ord. No. 94706, § 2(Attach. A), 9-13-01)

## Lease Agreement Section 11.12.1

### Sec. 35-679. Other Requirements and Regulations (River Improvement Overlay)

#### (a) Garbage and Trash Storage

No Collections, or storage for refuse, debris or garbage produced by any residence, business or industry in the River Improvement Overlay District or elsewhere shall be allowed in a River Improvement Overlay District when such collections or storage is visible from the publicly owned river walk. No hanging of laundry, cleaning rags, mops, or similar items shall be allowed within view of the river walk

#### (b) Portable Carts

Portable vending carts may be located on leased public property or private property on the River Walk with approval from the Historic and Design Review Commission. Applications for a certificate of appropriateness must include details regarding type of cart, items to be sold, method of controlling litter, location, and other pertinent information

#### (c) Boats, Barges and Water Taxis

Any and all private boats, barges, and water taxis allowed to operate on the San Antonio River on a permanent basis will require a certificate of appropriateness from the Historic and Design Review Commission. Details regarding the size and design, type of power sources, and other pertinent information shall be presented to the Historic and Design Review Commission for their review.

#### (d) Monuments, Markers and Memorials

Monuments, markets or memorial plaques are not permitted on the riverside of property abutting the river, or within the publicly owned right of way without the express written consent of the Historic and Design Review Commission.

#### (e) Solicitation

Unless specifically allowed by lease with the City of San Antonio, it shall be unlawful to: solicit alms and donations; distribute commercial and business advertising matter; and hawk, sell, or vend merchandise on public property or on the public right-of-way of the River Walk area, or outdoors on private property that is at River level and is within view of the River Walk public right-of-way.

## **Paseo Del Rio Association River Walk Novelty Vending and Mariachi Policies and Procedures**

### **Summary**

The Paseo Del Rio Association (PDRA) and the City of San Antonio (COSA) through the Parks and Recreation Department have entered into an agreement that will grant the PDRA the authority to receive, review and approve permit applications for individuals that desire to vend novelty items and Mariachi groups in the San Antonio River Walk Area. The following policies and procedures are proposed to be established in order to control, monitor and ensure the quantity and quality of vendors and Mariachis that desire to vend and/or entertain along the River Walk.

### **Application Process**

1. The vending process begins when a prospective vendor or mariachi entertainer<sup>1</sup> (Petitioner) requests a restaurant operator to submit a formal application to the PDRA for a permit to vend in the river walk area. The decision to submit a permit application to the PDRA is at the sole discretion of the operator and each operator is defined as the owner of the property and/or the entity leasing adjacent public right-of-way space from the city. General Managers area not authorized to submit an application unless formally authorized (written) by the operator.
2. All PDRA operators shall participate in this vending program and non-PDRA operators shall be required to submit the same application forms. Formal notices advising the public of this program will be sent by the City to non-PDRA operators and the general public. It is the intent of this program to require all individuals that desire to vend on the riverwalk to comply with the terms and conditions of this program.
3. A petitioner must have an accepting operator submit an application for each location desired.
4. Petitioner acknowledges and agrees that the PDRA shall require petitioner to request a criminal background investigation for petitioner **and** any employee of petitioner. Said background investigation shall require petitioner or his employee, if applicable, to contact the SAPD records division or other police entity to conduct this investigation and petitioner shall be responsible for all costs or fees associated with this background investigation
  - a. Petitioner acknowledges and agrees that criminal convictions identified as a result of this background investigation may result in denial of a petitioner's application at the sole discretion of the City or the PDRA.
5. Each petitioner will submit a list of products that they will be selling for application approval. Only approved products will be sold and any deviation or addition of products without approval may result in the immediate cancellation of all permits and permit fees collected will not be refunded.

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<sup>1</sup> For reference purposes, mariachi entertainers must comply with the same procedures and are therefore considered vendors and are therefore included in all vend/vending references in this document.

**EXHIBIT I**

- a. The petitioner shall present his/her products to the Committee for review. This shall include actual products, sketches of kiosk carts and/or any other means of description requested by the Review Committee
  - b. Such review is in addition to any review and approval as established by the COSA for businesses in the River Improvement Overlay District (RIO-3)<sup>2</sup>
- 6. An accepted permit application shall be reviewed and acted upon by a vendor committee (Committee) established by the PDRA. The Committee shall be comprised of five (5) members of the PDRA general board of directors and shall meet at least on a quarterly basis. All permit applications for a given period shall reviewed and acted upon by this committee within thirty (30) days of receipt and the decision of the committee may only be appealed to the executive committee of the PDRA, whose decision shall be final.
  - a. If a permit application is rejected, the petitioner may appeal within thirty (30) days of formal notice by the PDRA to the executive committee of the PDRA. Any appeal received after thirty (30) days shall not be considered and petitioner shall be required to submit a new application.
- 7. An application approved by the Committee shall be submitted to the Executive Director (Director) of the PDRA, or his designee, shall then initiate the process to license the petitioner.

**Permit Process**

- 1. Permit Issuance: The Director shall issue one permit license to a single petitioner for one three-month period, a calendar quarter
- 2. Each permit license shall include:
  - a. A photo of the approved petitioner
  - b. Approved petitioners contact information
    - 1. phone number(s)
    - 2. local mailing address, must match permit application
  - c. Identification of each approved vend location(s)
  - d. State of Texas Tax ID Numbered as issued by the State Comptrollers Office
  - e. Permit License term, length of permit
  - f. The back of each permit shall include a list of approved vend products
- 3. Each permit shall clearly state that "NO VENDING IS PERMITTED IN THE PUBLIC ACCESS AREAS OF THE RIVER WALK"
- 4. The actual permit shall be laminated and displayed prominently, professionally and worn at all times by the approved petitioner, with no exceptions.
  - a. Lost permits may be replaced for an additional fee.
  - b. Approved petitioners found and cited by COSA Park Police for illegal vending are subject to may result in the loss of vendor privileges and rights.
- 5. PDRA shall provide to each approved vendor a map that clearly identifies the approved vending area and vendors pedestrian access points
- 6. PDRA shall maintain summary of all approved vendors and provide an update to the Director within five (5) days prior to the start of a new calendar quarter.
- 7. Each calendar quarter is identified as follows:
  - a. Quarter 1: January through March

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<sup>2</sup> River Improvement Overlay, Ordinance Adopted 2/21/02

## EXHIBIT I

- b. Quarter 2: April through June
- c. Quarter 3: July through September
- d. Quarter 4: October through December

### Permit Fees

- 1. The permit fee per calendar quarter is \$175.00 per quarter for the first approved location.
  - a. If the approved vendor has multiple sites/locations the fee for each additional site is 150.00 per location per calendar quarter

### Rules and Regulations

- 1. All products and petitioners are expected to be of a quality and presentation level that augments and enhances the experience of visiting the river walk area
- 2. All products and services including Mariachi Groups must adhere to all sound restrictions, solicitation and trespassing laws and regulations of the PDRA and the COSA
  - a. Any variance from these guidelines may result in the arrest for trespassing and the loss of vendor privileges
- 3. All permits are for a specific location and will require the vendor to access all approved locations through the adjacent street entrance, not River Walk entrances. NO VENDORS WILL BE ALLOWED TO ACCESS APPROVED VENDING LOCATIONS VIA THE RIVER WALK.
  - a. Any violations of this required may result in the loss of the approved permit and any and all fees paid to the PDRA

### Security and Enforcement

- 1. All approved petitioners, shall be monitored by representatives of the PDRA and the COSA Park Police.

### Contact Information

- 1. All information related to this program may be obtained from:

Mr. Greg Gallaspy, Executive Director  
The Paseo del Rio Association  
110 Broadway, Suite 60  
San Antonio, Texas 78205  
(210) 227-4262