

**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 \_\_\_\_\_ passed and approved by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, and the SAN ANTONIO RIVER WALK ASSOCIATION, 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 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 FOR EVENTS**

1.1 CITY, for and in consideration of the agreements herein contained, does hereby grant to LICENSEE the non-exclusive right to use public property in the downtown River Walk and Museum Reach areas as further described on the diagram attached hereto and incorporated herein as EXHIBIT A (hereinafter called the "Premises") for use in the production of special events for the public ("Events") as further defined in this Article 1.. The Premises does not include, (i) the use of public properties in areas which are covered by River Walk Lease Agreements or San Antonio River Barge Concession Contract ("River Barge Contract") (ii) the use of the Convention Center turn-around basin and (iii) the Ameson River Theater and its associated concession stand. The use of the Ameson River Theater, La Villita and its associated concession stand may be arranged and fees paid by LICENSEE for Events authorized herein, except for five (5) Events per year, which shall require coordination but no fees. 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 Ameson River Theater. The use of the Convention Center turn-around basin may be arranged by LICENSEE through coordination with City's Director of Convention Sports & Entertainment Facilities Department.

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).

1.3 LICENSEE acknowledges that CITY has contracted with a river barge concessionaire ("Concessionaire") for the operations of dinner, taxi and tour barges on the river. The conduct of some of the Events authorized herein involves use of river barges on the river. To avoid conflicts with operations of Concessionaire, LICENSEE shall provide to Concessionaire and City annually by February 28th a list of such Events for the following twelve months commencing on April 1st. LICENSEE shall use its best efforts to communicate with Concessionaire and Director so as to avoid any conflicts in this dual use of the river.

1.3.1 LICENSEE shall primarily utilize barges owned by the LICENSEE but may also rent from Concessionaire additional barges as available or from the CITY with approval from the Director.

Barges utilized by LICENSEE shall only be operated by LICENSEE employees and/or assigned representatives who have been trained and approved by LICENSEE. Training shall include but not limited to the following: 8 hours safety instruction in marina and 20 hours barge operation time accompanied by an experienced driver. LICENSEE shall coordinate access to river with Concessionaire for access to the river at non-peak times such that training does not unreasonably interfere with Concessionaire's operations. LICENSEE agrees to only use barges that are licensed by the State of Texas.

1.3.2 CITY may make available to LICENSEE the International Center marina for the storage of up to thirteen (13) of LICENSEE'S barges and access for use by LICENSEE; however, CITY reserves a superior right to displace LICENSEE from this location after ninety (90) days written notice. In the event CITY displaces LICENSEE from use of International Center marina, CITY and LICENSEE shall renegotiate this Agreement if such displacement materially interferes with LICENSEE'S ability to perform its obligations hereunder. CITY may also make space available to LICENSEE in its Nueva Street marina for up to twenty-one (21) barges at least seven (7) calendar days in advance of Holiday River Parade and Armed Force River Parade, provided LICENSEE supplies written request for same no less than thirty (30) calendar days prior to need date and no more than sixty (60) calendar days prior to need date and receives written approval from CITY.

1.3.3 LICENSEE agrees that at no time during this agreement shall it provide river tour or shuttle services to the general public in direct conflict with the CITY'S Concessionaire. With no less than three (3) calendar days prior written approval from the Director, LICENSEE may allow employees, volunteers, sponsors, VIPs, elected officials, guests and board members on LICENSEE's barges in connection with Events authorized hereunder or sponsorship opportunities/development. LICENSEE may not charge a fee or include a reimbursement charge (excluding sponsorships) to another party for the provision of this service, the annual Drift and Dine event excepted.

1.3.4 LICENSEE may acquire or convert barges to alternative fuels, including but not limited to, CNG. In the event of conversion to CNG-fueled barges, CITY may provide CNG fuelling, if available, for such barges at its existing facilities and at reasonable charges for such fuelling. CITY may in the future require LICENSEE's barges be converted to electric. CITY would work with LICENSEE on timeline for conversion.

1.4 Events authorized hereunder shall include the following Events, plus up to five (5) additional Events per year coordinated with the Director. This list may annually be amended, modified, or deleted and substituted upon approval of the Director:

1. Holiday River Parade and Tree Lighting;
2. Mardi Gras Festival and Parade;
3. St. Patrick's Day Festival and Parade;
4. Drift and Dine;
5. Armed Forces River Parade;
6. A minimum of five (5) Artisan's Shows;
7. Mariachi Festival;

8. Lanterns on the Water;
9. Diwali Festival and Parade;
10. Haunted River and Parade;
11. Holiday Barge Caroling; and
12. Luminaria Festival
13. Diez y Seis Festival and Parade
14. Star, Stripes and Lights

1.5 LICENSEE shall deliver to CITY and Barge Concessionaire, in writing, a list of each calendar year's Events no later than February 28th for Events commencing on April 1st. LICENSEE'S list shall include a description of each event, proposed dates and hours, and event location. CITY agrees to respond with confirmation of event dates and times within twenty-one (21) calendar days of receipt thereof. It is further understood that CITY may require date changes if circumstances dictate such changes, in which case CITY shall notify LICENSEE of the date changes and reasons necessitating the rescheduling no later than thirty (30) calendar days in advance of the requested date(s).

1.6 During the course of a contract year and after annual calendar of Events has been submitted, new Events not listed in annual calendar of Events may be held by LICENSEE on the Premises during the year, if approved by City LICENSEE shall submit notification of new Events in writing to the Director of Center City Development and Operations Department (hereinafter called "Director") at least ninety (90) calendar days prior to date of proposed event. CITY agrees to respond to such requests within thirty (30) calendar days of receipt. Nothing herein shall be construed to suggest or imply any obligation by CITY to approve new 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.

1.9 ARTISAN SHOWS: LICENSEE agrees to establish a screening and placement process for the selection of artists and craftsman participating in approved ARTISAN 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 beginning on April 1, 2019 and ending on March 31, 2024. So long as LICENSEE is not in default, LICENSEE

may submit written request no later than 180 calendar days prior to March 31, 2024 to request renewal of the term of this LICENSE AGREEMENT. Though no renewal is effective unless approved by City Council, Director has no duty to present proposed renewal to City Council, even though LICENSEE has submitted requisite notice.

2.2 The City and LICENSEE reserves the right to negotiate terms and consideration for the renewal term, however, if no changes are made, the renewal term shall continue on the same terms and conditions set forth herein.

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 Events as may be approved by the Director pursuant to Paragraph 1.6. Conduct of such Events shall be subject to pre-review per Article 7 and all Events 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 21-52 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 identified in Paragraph 1.4, or authorized in Paragraph 1.6 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 Barge Concession Contract. In the course of conducting 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 or her 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 Drift and Dine 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.

**3.5 LICENSEE'S use of the International Center Marina is subject to the follow conditions:**

1. No fuelling may occur inside marina.
2. No smoking may occur inside marina, near marina entrances and near fuelling areas.
3. Fuelling may not occur more than eight days prior to generator or barge being used for Holiday River Parade and Armed Forces Parade; fuelling may not occur more than four days prior to generator or barge being used for all other Events.
4. No storage tanks containing fuel may be stored inside marina.
5. Fuel tanks on barges must be removed from marina within two days after being utilized; generators must be stored in storage cage designated for generators within two days of being utilized.
6. Barge generators shall not be turned on inside marina.
7. SARWA staff may operate in marina Monday to Friday from 7:45 am to 4:30 pm. Unless conducting an Event, SARWA staff must receive written permission from City to operate in marina beyond of these stated hours.
8. SARWA must purchase and maintain fire extinguishers as directed by River Walk Superintendent to be located throughout marina.
9. During any work being conducted inside or near marina entrance, all exhaust fans located shall be turned on.
10. For a gas/oil spill in the marina or smoke/fumes emanating from marina, all exhaust fans shall be turned on, if they are not on already. Fans must be left on until smoke/fumes have been eliminated. If incident occurs after 9:00 pm, fans may be left on overnight.
11. International Center Security desk shall be notified within thirty minutes of an incident – (210) 886-9874.
12. River Operations Superintendent shall be notified within 30 minutes of an incident
13. If gas or oil is spilled in the river after 4:30 pm Monday to Friday or on weekends, River Operations on-call individual must be called within 30 minutes of an incident. [Note: The contact information for the River Operations on-call individual is sent by CCDO staff to stakeholders, including SARWA, by Thursday of each week.]
14. For spills, work with City staff to use emergency clean-up equipment and chemicals to mitigate damage from spill until HazMat individuals arrive on the scene.

**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 warrant 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.

## **5. CONSIDERATION**

5.1 LICENSEE is authorized to design, develop, produce, and merchandise unique logos, artwork, products, merchandise, clothing, and other products (collectively "Merchandise") reflecting the River Walk and its unique historic image for sale. The River Walk logo to be incorporated or depicted in Merchandise shall be approved by the Director. In consideration of this license by CITY, LICENSEE may keep 100% of royalty payments received from All American Licensing (AAL) or its successor up to \$110,000. Once SARWA has received \$110,000 in royalty payments, SARWA shall deposit 75% of all subsequent royalty payments, received from AAL or its successor, into a permanently restricted account ("Merchandise Account"). Such Merchandise Account shall be used for improvements to the River Walk approved by Director in consultation with LICENSEE and minimum balance shall be no less than \$25,000.00. Both CITY and LICENSEE may recommend projects to be funded by the Merchandise Account including, but not limited to, historic interpretation, beautification, water quality, and fauna/flora improvements and education; however, Director's approval shall be required before LICENSEE initiates expenditure from Merchandise Account.

5.2 LICENSEE shall provide CITY no less than one and one-half (1 1/2) full color pages in each issue of LICENSEE's monthly magazine (Rio), and LICENSEE shall provide highest available membership status and all accompanying benefits to no less than three (3) CITY venues (i.e., La Villita, Market Square, Spanish Governor's Palace) each year of Agreement.

## **6. RECORDS, REPORTS AND AUDIT RIGHTS, Trademark**

6.1 LICENSEE shall submit to the CITY an annual report identifying each event, dates & hours of event, event location, number of security personnel hired for event, number & type of food booths, number & type of beverage booths, number of merchandise booths, description of live entertainment, number of boats, number of portable toilet facilities, tickets sold, and media outreach. Media outreach shall be defined as verifiable impressions, to include television households reached, gross impressions for radio spots, Face Book impressions, outdoor advertising reach, print circulation, website users, and/or email marketing lists. Said report shall be due within ninety (90) calendar days of LICENSEE's fiscal year (ending March 31st).

6.2 LICENSEE shall maintain, in the City of San Antonio, Texas, books and records reflecting its operations approved in this Agreement in accordance with generally accepted accounting principles. LICENSEE shall submit through the Director of Finance or his representative an end of year Income Statement, which shall include an independent auditor's written report stating whether the Royalty Payments paid to LICENSEE by AAL or its successor during the preceding year were made in accordance with the applicable terms of LICENSEE'S agreements with AAL, or its successor. The independent auditor's written report shall further state whether the Royalty Payments deposited in Merchandise Account were accurately stated as provided under Section 5 of the Agreement between City and SARWA. Said report shall be delivered to CITY each year by June 30th.

**6.3 Trademark License:** Subject to the terms and conditions of this Agreement, CITY hereby grants to LICENSEE a non-exclusive, non-transferable, non-sublicensable without prior written approval of CITY, royalty-free, limited duration license to utilize the CITY'S "RIVER WALK" trademark, the registration certificate of which is attached hereto as Exhibit/Attachment (the "Licensed Mark"), on or in connection with products for sale as authorized under this Agreement during the term of this Agreement. LICENSEE hereby acknowledges and agrees that the CITY shall continue to own all rights, titles, and interests in and to the Licensed Mark and all related trademarks, service marks, trade names, domain names, and trade dress (collectively referred to as "Related Marks"); and any goodwill arising from LICENSEE's use of the Licensed Mark or Related Marks exclusively inures to the benefit of and belongs to the CITY. Upon termination of this Agreement for any reason, LICENSEE'S right to use the Licensed Mark shall automatically cease.

**6.3.1** The LICENSEE shall provide cooperation and assistance to the CITY, its successors, assigns, or other legal representatives, solely at the CITY'S request and only in relation to the Licensed Mark and Related Marks, including, but not limited to, providing any and all affidavits, declarations, oaths, samples, exhibits, specimens, and other documentation as may be reasonably necessary for the CITY to achieve the following: (1) the complete and proper preparation of any application for the registration of Related Marks or of any other documentation required for the maintenance or renewal of a resulting or existing registration; (2) obtaining assignment or cancellation of any registration or application for registration that may cause harm to the CITY or interfere with any registration or application for registration of the CITY; (3) the successful prosecution or defense of any opposition, infringement, or other proceedings that may arise in connection with the Licensed Mark or Related Marks; (4) obtaining any additional legal protection for the Licensed Mark or Related Marks that the CITY may reasonably deem appropriate in accordance with the laws now or hereafter in effect in the United States or any other foreign country; and (5) the implementation or perfection of this Agreement. Nothing stated herein or elsewhere in this Agreement shall be construed as to give LICENSEE any authority, in any manner, to act as the CITY'S agent or representative, in any circumstance, related or unrelated to this Agreement.

**6.3.2** The CITY hereby reserves all rights not expressly granted to LICENSEE under this Agreement, including, but not limited to, the CITY'S right to use the Licensed Mark and Related Marks in its respective business, the CITY'S right to police the Licensed Mark and Related Marks against infringers, and the CITY'S right to bring legal action against any potential infringer, within the CITY'S geographic territory or elsewhere.

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

**7.1** Not later than twenty-one (21) calendar days prior to approved event dates, LICENSEE shall submit to the Directors Office 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. Location and company names of vendors providing food and beverages
4. Proposed number and location of space for Artisan show
5. Event start and stop times and dates
6. General 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, recycling containers, and trash containers
10. Portable toilets, if applicable
11. Security arrangements
12. Location(s) of free seating areas & reserved seats for parades, if applicable
13. Name & 24 hour contact # for LICENSEE'S on premise event Representative
14. Plan to clean-up premises & remove all trash from Premises during & immediately after event
15. Statement confirming LICENSEE has coordinated Event logistics with City River Walk staff and river barge concessionaire, identifying river barge concessionaire representative by name and Public Art San Antonio or PASA, if applicable

**7.1.1 LICENSEE shall comply with CITY's Green Events Ordinance 2010-04-08-0303. Prior to submittal of Green Events Ordinance application to CITY, Licensee shall conduct preliminary consultation with CITY to address event recycling operations and logistics. LICENSEE may demonstrate compliance with Green Events Ordinance by providing invoices from Centro staff citing amount of recycling collected during Holiday River and Armed Forces parades.**

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

**7.3 LICENSEE shall insure that the design and décor 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 good quality and that prices charged, 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 Artisan 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 pay a third party to prepare lighting for the annual HOLIDAY RIVER PARADE AND TREE LIGHTING event. Light preparation includes replacing non-working bulbs and light strands. The Merchandise Account established by Section 5 shall not be used for holiday lighting. CITY will 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 CITY.**

**8.3 During Holiday River Parade, LICENSEE agrees and guarantees that specific areas 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 also agrees to provide public seating equivalent to three (3) contiguous blocks on both sides of the parade route. The balance of seating may be reserved and sold by LICENSEE. Any change to this seating requirement shall require the written approval of the Director.**

**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 DIRECTOR to restrict access on the date of the parade at a given time to enhance 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 must abide by all rules provided by City regarding use of 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 responsibility of LICENSEE.**

**9.2 For all non-Artisan shows, 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. Installation, maintenance and removal of portable toilet facilities no later than 7:00 a.m. on the day after event conclusion 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, the San Antonio Police Department, and/or Bexar County Sheriff's Office serving as security and crowd control officers. The LICENSEE may supplement these officers with licensed security officers as necessary. City will determine adequacy of security**

measures and may require LICENSEE to provide additional security personnel to include San Antonio Park Police, the San Antonio Police, and/or Bexar County Sheriffs.

10.2 CITY shall provide the normally scheduled contingent of Police Officers and Park Police Officers in the River Walk area during the Events conducted by LICENSEE. LICENSEE expressly understands and agrees that CITY, by providing Police and Park Police service, has not agreed to act and does not act as an insurer of LICENSEE or LICENSEE'S (or LICENSEE'S sub licensees, suppliers or contractors) property and does not guarantee security against theft, vandalism or injury of whatever 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.

11.2 LICENSEE agrees to hold CITY harmless for any theft, damages or destruction of signs, goods and/or other personal property of LICENSEE, its sub licensees, suppliers, or contractors. LICENSEE understands and agrees that all personal property placed by LICENSEE, its sub licensees, suppliers, or contractors upon the Premises is at the sole risk and exposure of LICENSEE its sub licensees, suppliers, or contractors 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, walkway, 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. LICENSEE shall be responsible at its own cost for repairs for damages to licensed premises caused by LICENSEE and/or its subcontractors.**

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

**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, 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 which is illegal; and should any exhibition or performance or any part thereof be deemed by CITY to be illegal or inappropriate, then LICENSEE shall delete or change such portions so that said attractions will comply. LICENSEE agrees to make such deletions or changes immediately upon receipt of notice from CITY.**

**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, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, in the use of or admission to the Premises is prohibited.**

**11.12 LICENSEE shall coordinate with the River Operations Superintendent LICENSEE'S plan for the cleanup and collection of litter, trash, paper and all other waste during and immediately after Events. LICENSEE acknowledges it shall include any area(s) in either or both marinas as part of its clean-up responsibilities when either or both marinas are utilized in conjunction with an event.**

**11.12.1 Except for the Holiday River Parade, LICENSEE will assume responsibility to ensure the return of Premises to the same condition of cleanliness prior to Events. 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 of 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, Police, security officer(s) on duty, or Center City development and Operations Department representative. In all cases, LICENSEE shall comply with CITY'S sound control ordinances, regulations and guidelines.**

**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 or security officers on duty.**

**11.13.2 LICENSEE shall keep all public rights-of-way free of any obstructions shall ensure a two-way pedestrian path be maintained on CITY right-of-way at all times and shall not allow queuing or waiting of patrons along the River Walk without first obtaining the Director's consent.**

## **12. LIENS PROHIBITED**

**12.1 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.**

**12.2 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.**

**12.3 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.**

## **13. INDEMNIFICATION**

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

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

13.2\_ The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE'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. INSURANCE REQUIREMENTS**

14.1 Prior to the commencement of any work under this Agreement, LICENSEE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Downtown Operations Department, which shall be clearly labeled "*San Antonio River Walk Association License Agreement*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Center City Development and Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based

upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

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

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General & Products Completed Operations Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
4. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 Aggregate or its equivalent in Umbrella or Excess Coverage.

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

City of San Antonio

**Attn: Center City Development and Operations  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

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

- **Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;**
- **Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;**
- **Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.**
- **Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.**

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

**14.7 In addition to any other remedies the City may have upon LICENSEE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order LICENSEE to stop work hereunder, and/or withhold any payment(s) which become due to LICENSEE hereunder until LICENSEE demonstrates compliance with the requirements hereof.**

**14.8 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 Agreement.**

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

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

**14.11 LICENSEE and any Subcontractors are responsible for all damage to their own equipment and/or property.**

## **15. ASSIGNMENT AND SUBLETTING**

**15.1 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.**

**15.2 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.**

## **16. DEFAULT AND REMEDIES**

**16.1 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:**

**16.1.1 LICENSEE fails to pay any consideration as provided for in this License, and such failure continues for a period of ten (10) days after receipt by LICENSEE of written notice from the CITY of past due payment;**

**16.1.2 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**

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

**16.2 LICENSEE shall have the following opportunities to cure in the following events of default or material breach:**

**16.2.1 If, during an 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 the approved event by LICENSEE, LICENSEE shall cure such default or material breach within two (2) hours after verbal notice is provided to the LICENSEE'S Executive Director or the LICENSEE'S event representative named by the CITY'S Director, Park Police, Police, River Operations Superintendent or his designee; and**

**16.2.2 For all other times during the term of this agreement, if LICENSEE neglects or fails to perform or observe any of the terms, provisions, conditions or covenants herein contained and on LICENSEE'S part to be performed, LICENSEE shall cure such neglect or failure within 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.**



**16.3 The CITY, acting through the City Council, hereby expressly reserves the right to terminate this License for the following, which are hereby agreed also to be events of default:**

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

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

**16.4 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.**

**16.5 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.**

**16.6 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, ejection or otherwise, and may dispossess LICENSEE and remove LICENSEE and all other persons and property from the Premises.**

**16.7 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.**

**16.8 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.

16.9 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.

#### **17. CONDEMNATION**

17.1 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.

#### **18. SURRENDER OF PREMISES**

18.1 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.

#### **19. SEVERABILITY**

19.1 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.

#### **20. AMENDMENT**

20.1 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 is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

#### **21. TAXES AND LICENSES**

**21.1 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.**

## **22. NON-DISCRIMINATION**

**22.1 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.**

## **23. WAGES**

**23.1 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.**

## **24. CONFLICT OF INTEREST**

**24.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with City. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies, or service, if any of the following individual(s) or entities is a party to the contract or sale:**

- **A City officer or employee; his or her spouse, sibling, parent, child, or other family member within the first degree of consanguinity or affinity;**
- **An entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10% or more of the voting stock or shares of the entity, or (ii) 10% or more of the fair market value of the entity; or**
- **An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary entity.**

**24.2 LICENSEE warrants and certifies, and the CITY has entered this Agreement with reliance thereon, that**

**(i) none of the above listed individuals or entities is a party to this contract; and**

**(ii) LICENSEE has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.**

## **25. NOTICES**

**25.1 Notices to CITY required or appropriate under this License shall be deemed sufficient if in writing and mailed, first class mail, postage prepaid, addressed to**

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

**Director  
Center City Development and Operations  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

**or to such other address as may have been designated in writing by the Director or her designee. Notices to LICENSEE shall be deemed sufficient if in writing and mailed, first class 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  
San Antonio River Walk Association  
110 Broadway, Suite 500  
San Antonio, Texas 78205**

## **26. PARTIES BOUND**

**26.1 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.**

## **27. APPROVAL OF CITY**

**27.1 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 Center City Development and Operations of the City of San Antonio or his designee.**

## **28. RELATIONSHIP OF PARTIES**

**28.1 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 compensation, nor any other provision contained herein, nor any acts of the parties hereto create a relationship other than the relationship of LICENSOR and LICENSEE.**

## **29. TEXAS LAW TO APPLY**

**29.1 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**

**30. GENDER**

**30.1 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.**

**31. CAPTIONS**

**31.1 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.**

**32. AUTHORITY**

**32.1 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 \_\_\_\_\_, 2019.**

**LICENSOR:**

**CITY OF SAN ANTONIO,  
A Texas Municipal Corporation**

**By: \_\_\_\_\_  
Director, Center City Development and  
Operations Department**

**ATTEST:**

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

**APPROVED AS TO FORM:**

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

**LICENSEE:**

**SAN ANTONIO RIVER WALK ASSOCIATION,  
A Texas Non-Profit Corporation**

**By: Mazzie Thompson  
Executive Director**