

2019-04-18-0319

ORDINANCE

APPROVING A FIVE YEAR LICENSE AGREEMENT WITH ALAMO KIWANIS CHARITIES, INC. FOR USE OF THE ARNESON RIVER THEATER FOR ITS ANNUAL PRESENTATION OF "FIESTA NOCHE DEL RIO" FOR THE YEARS 2019 - 2023. EXPECTED REVENUES IN THE AMOUNT OF \$61,982.22 GENERATED FROM THIS AGREEMENT WILL BE DEPOSITED INTO THE GENERAL FUND.

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WHEREAS, since 1957, the City of San Antonio has licensed the Arneson River Theater to Alamo Kiwanis Charities, Inc. (Alamo Kiwanis) for its annual theatrical presentation of “Fiesta Noche del Rio”; and

WHEREAS, this outdoor production on the River Walk has become a summertime tradition, entertaining over one million visitors from around the world; and

WHEREAS, in addition to a being a popular summer event, “Fiesta Noche del Rio” is one of the Alamo Kiwanis’ major fundraising events, having raised over \$2.75 million for San Antonio children’s charities since its establishment; and

WHEREAS, the Alamo Kiwanis’ most recent license agreement for “Fiesta Noche del Rio” expired August 2018; and

WHEREAS, city staff is recommending a new five-year license agreement be authorized to allow the Alamo Kiwanis continued use of the Arneson River Theater on specific dates; and

WHEREAS, the license agreement would be valid from 2019 – 2023; and

WHEREAS, in consideration, the Alamo Kiwanis would pay a total of \$61,982.22 in license fees; **NOW THEREFORE:**

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

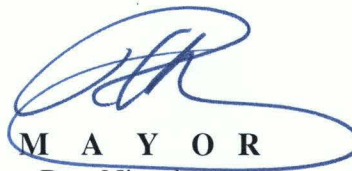
SECTION 1. The City Manager or designee, or the Director of the Center City Development & Operations or designee, is authorized to negotiate and execute the License Agreement, with Alamo Kiwanis Charities, Inc. for use of Arneson River Theater for its annual presentation of “Fiesta Noche del Rio” for the years 2019-2023. A copy of the agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 219000000007 and General Ledger 4407710.

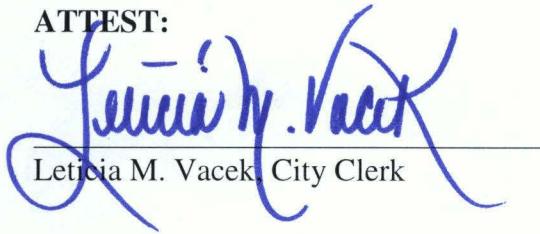
SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 18th day of April, 2019.


M A Y O R
Ron Nirenberg

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Andrew Segovia, City Attorney

Agenda Item:	8 (in consent vote: 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20A, 20B)						
Date:	04/18/2019						
Time:	10:07:36 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a five year license agreement with Alamo Kiwanis Charities, Inc. for use of the Arneson River Theater for its annual presentation of "Fiesta Noche del Rio" for the years 2019 - 2023. Expected revenues in the amount of \$61,982.22 generated from this agreement will be deposited into the General Fund. [Lori Houston, Assistant City Manager; John Jacks, Director, Center City Development & Operations]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10	x					

SW/ah
4/18/19
Item No. 8

ATTACHMENT I

Licensor's Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Center City Development & Operations
Department)

Licensee: Alamo Kiwanis Charities, Inc.

Licensee's Address: 911 N. Main Ave. Suite B-4

Renewal Provision: One, five-year term

Address for Payment of
License Fee: City of San Antonio, Treasury Division, Central
Billing Station, P.O. Box 839975, San Antonio, Texas
78283-3975

Director: The Director of the City of San Antonio's Center City
Development & Operations Department or designee,
or such other successor department as designated by
Licensor.

La Villita Manager City employee responsible for day to day management
of La Villita.

2. Grant, Use

2.1 CITY for and in consideration of the payment of the license fees hereinafter set forth and the covenants and agreements hereinafter contained, does hereby grant to **LICENSEE**, for the operation of the event known as Fiesta Noche Del Rio, the right to use and occupy the Arneson River Theater and the associated concession stand, hereinafter called "Licensed Premises". **LICENSEE** may also use theater lighting system, located on the stage and in the audience seating area.

3. Duration of License

3.1 This License shall be effective from 2019 – 2023, from 5:00 p.m. to 11:00 p.m. on the dates indicated on Exhibit I. **LICENSEE** is permitted to setup prior to 5:00 p.m. on the dates indicated on Exhibit I, except on days when CITY has the Arneson River Theater programed. In these instances, **LICENSEE** may begin setting up promptly at 5:00 p.m.

3.2 In addition, **LICENSEE** is permitted to conduct ticket sales on said dates beginning at 10:30 a.m. through 8:30 p.m. from the area identified in Exhibit II. Should area depicted in Exhibit I be unavailable for ticket sales, the La Villita Manager will work with **LICENSEE** to identify an alternative location to conduct ticket sales.

3.3 **LICENSEE**, at no additional fee, is permitted to use the Licensed Premises to hold one (1) press conference each year prior to the first weekend of Fiesta Noche Del Rio. Use of the

Licensed Premises for said purpose is based on availability and requires prior written approval of the La Villita Manager.

3.4 LICENSEE, at no additional fee, is permitted to use the Licensed Premises for up to three (3) "Lone Star Music Nights" per year. LICENSEE, at no additional fee, is permitted to use the Licensed Premises for additional performances of Fiesta Noche Del Rio. These additional performances require LICENSEE to provide thirty (30) days' notice to the La Villita Manager prior to the event date and are based upon availability.

3.4.1 LICENSEE, at no additional fee, is permitted to use the COS House each year, once during the first weekend of Fiesta Noche Del Rio and once during the last weekend of Fiesta Noche Del Rio, with prior written approval of the La Villita Manger.

3.4.2 LICENSEE acknowledges and agrees that the CITY may rent the Cos House on any of the scheduled nights to the general public as a part of the CITY's reservation process and policies.

3.5 On certain dates within the event dates of this Agreement, CITY may utilize specific areas or plazas of the Licensed Premises for official City events. CITY shall endeavor to give LICENSEE thirty (30) calendar days written notice prior to any such utilization. Such use will only be for events of significance to CITY and upon written form notice from the Director. In consideration, CITY agrees to discount annual fee owed by LICENSEE by the daily prorate value of the annual license fee. LICENSEE acknowledges that said use of any or all of the Licensed Premises for official CITY events shall in no way make the CITY liable for LICENSEE'S lost revenue or incurred expenses.

3.6 LICENSEE understands and agrees that all personal property placed by LICENSEE upon the Licensed Premises is at the risk and expense of LICENSEE and the CITY shall not be liable to LICENSEE or to any other person for loss, theft, vandalism, damage or injury of any kind to person or property. LICENSEE shall remove and/or place in designated storage all of its equipment from the Arneson River Theater stage no later than 12:00 midnight following the final performance each week. In the event that such Licensed Premises are not vacated as so provided, the CITY is hereby authorized to remove from the Licensed Premises, and store at the expense of the LICENSEE, all goods, wares, merchandise, and property of any kind and description which may be occupying the Licensed Premises. CITY shall not be liable for any damages or loss to such goods, wares, merchandise, and property of any kind which may be sustained by reason for such removal or the place to which it may be removed.

3.7 LICENSEE may, with written approval of the La Villita Manager, store equipment in certain designated areas of the Arneson River Theater, if available and is specified by the La Villita Manager. LICENSEE understands and agrees that the CITY assumes no responsibility for the repair or replacement of any of the LICENSEE'S property stored in any CITY facility.

4. Consideration

4.1 In consideration of the Agreement as specified herein before, and for CITY granting concession rights specified in Article 6 herein after during the term of this Agreement. **LICENSEE** promises to pay CITY, as and for the rights of said License, the amount specified hereinafter. Said amount shall be due and payable to the CITY no later than December 31 of each Licensee Year.

License Year	License Fee	Daily Prorate Value
2019	\$8,582.22	\$476.79
2020	\$13,350.00	\$476.79
2021	\$13,350.00	\$476.79
2022	\$13,350.00	\$476.79
2023	\$13,350.00	\$476.79

4.1.1 In the event that any dates listed under Exhibit I are cancelled by **LICENSEE** due to inclement weather, **LICENSEE** may reduce the annual license fee owed by the daily prorate value of the annual license fee.

4.2 CITY and **LICENSEE** shall inspect and review the premises of the Arneson River Theater and surrounding areas, all furniture and equipment made available for use by **LICENSEE** and acknowledge prior to use and after the event, the condition of the premises, furniture, and note damages and changes to the condition of said premises.

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

5. Acceptance and Condition of Premises

5.1 **LICENSEE** has had sufficient time and opportunity to examine the Licensed Premises and acknowledge that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LICENSEE'S** use of the Licensed Premises shall be conclusive evidence of **LICENSEE'S** acceptance thereof in good satisfactory order for the purpose which licensed. CITY specifically disclaims any warranty of suitability for **LICENSEE'S** intended commercial purposes.

5.2 **LICENSEE** agrees that no representation, respecting the condition of the Licensed Premises and no promise to decorate, alter, repair, or improve the Licensed Premises either before or after the execution hereof, have been made by CITY or its agents to **LICENSEE** unless the same are contained herein or made a part hereof by specific reference herein.

6. Use and Concession Rights

6.1 The Licensed Premises hereunder shall be occupied and used by **LICENSEE** solely for the operation of the event known as Fiesta Noche Del Rio, as well as the operation of up to three (3)

“Lone Star Music Nights” per year. **LICENSEE** agrees and specifically understands that this Agreement is confined to the privilege to use the Licensed Premises set forth herein and that the permission herein given does not grant **LICENSEE** any interest or estate in the Licensed Premises but is mere personal privilege to do certain acts of temporary character upon the Licensed Premises, including access thereto at all times. **CITY** reserves the right to enforce all necessary and proper rules for the management and operations of the Licensed Premises.

6.2 During the term of the Agreement, **LICENSEE** is authorized to contract with a properly licensed concessionaire for the sale of food and both alcoholic and non-alcoholic beverages on the Licensed Premises. **LICENSEE** is further authorized to provide cushion rentals and to sell fans, t-shirts, posters, and other Fiesta Noche Del Rio merchandise. Other merchandise and/or services may be offered for sale to the general public on the Licensed Premises only after approval by the Director.

6.3 **LICENSEE** agrees that the in implementation of such concession rights it shall abide by conform to, and comply with all applicable laws, ordinances, rules, and regulations and will not do or permit to be done anything in violation thereof. If the attention of **LICENSEE** is called to any such violation, **LICENSEE** or those under its control will immediately desist from and correct violation.

7. Non-Discrimination

7.1 As a party to this contract, **LICENSEE** understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

8. City's Obligation

8.1 **CITY** shall use its best efforts to insure the Licensed Premises are in good condition and fit the purpose authorized hereunder and that all existing restrooms, electrical power, water, plumbing, and mechanical equipment are in working order. However, **CITY** shall in no way be liable for damages by reason of Licensed Premises being in disrepair in injured or by any casualty whatsoever which occurs unexpectedly or occurs by some reason which is not within the reasonable control of **CITY**. **CITY** further agrees that it will use its best efforts to not schedule routine maintenance of the Licensed Premises at times that conflict with Fiesta Noche Del Rio performances.

8.2 **CITY** shall provide trash and recycling receptacles and transfer from the Licensed Premises to its collection facilities. **LICENSEE** shall collect and place all trash and recyclables in provided receptacles.

8.3 **CITY** shall have one janitorial services person on duty from 5:00 p.m. to 11:00 p.m. on the dates indicated on Exhibit I.

8.4 **CITY** shall aid in promoting **LICENSEE'S** event through the **CITY'S** social media outlets, newsletters, and calendar listings.

9. Licensee's Obligation

9.1 A representative of **LICENSEE**, approved by Director, shall remain on the Licensed Premises during the term hereof and until the performers and public have left the Licensed Premises.

9.2 **LICENSEE** agrees, at its expense, to clean and clear the Arneson River Theater and the concession booth of **LICENSEE'S** materials and equipment after each performance.

9.3 **LICENSEE** shall clear backstage and seating area of the Arneson River Theater of trash debris left behind by performers and audience and place collected trash in areas approved by the La Villita Manager.

9.4 **CITY** provides access to safe and operable electrical circuit breaker panels throughout La Villita, most of which have dedicated circuits and connections for event use. **LICENSEE** may connect pre-approved temporary loads and equipment to the existing electrical panel outlets and connections. Temporary electrical panel expansion and connection must be pre-approved by the La Villita Manager and conducted by a certified, bonded Electrician, and all electrical must comply with applicable City Codes, including but not limited to the Uniform Building Code. All electrical requirements including permits and additional equipment necessary to sustain event, will be the responsibility of **LICENSEE**.

Upon connection to any breaker panel used in the production of the event, **LICENSEE** will assume responsibility for the installation, condition, safety, and effects of all electrical connections, cords, and associated equipment used in the production of the event, by its exhibitors, vendors, booths, operators, etc. All costs associated with the installation of/connection of and removal of temporary electrical expansion shall be borne by the **LICENSEE**. **LICENSEE** acknowledges breaker panel connections and internal wiring shall not be altered. City Electrician may oversee the **LICENSEE'S** installation of event electrical service to ensure safety and proper installation. The City Electrician and La Villita Manager will have authority to stop and/or disconnect any installation they deem unsafe, and **LICENSEE** agrees to comply immediately with any safety-related orders.

9.5 **LICENSEE** shall hire a professional technician to operate the theatrical lighting board equipment. La Villita Manager has the right to request technician's resume.

9.6 **LICENSEE** shall not injure, mar or deface in any manner the Licensed Premises and shall not cause nor permit anything to be done whereby the Licensed 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 Licensed Premises, nor shall it make or allow to be made any alteration of any kind therein without the approval of the Director.

9.7 **LICENSEE** shall pay all license fees and taxes lawfully levied against it during the term thereof.

9.8 **LICENSEE** covenants that it and those under its control, including concession contractor(s) referred to in paragraph 6.2 shall comply with all La Villita loading and unloading regulations and traffic and parking regulations as applicable to Villita and Presa streets. Should exceptions to such regulations be required by **LICENSEE**, a written request for such exceptions shall be submitted to the La Villita Manager at least seventy-two (72) hours in advance of the need. **CITY** does not guarantee to provide **LICENSEE** or its contractor(s) storage space in the concession stand the Arneson River Theater during non-scheduled hours.

9.9 **LICENSEE** further understands and agrees that, in the event the **LICENSEE** intends to play or perform copyrighted music it must obtain licenses for such music from the owners of such copyrights, including but not limited to, ASCAP. **LICENSEE** covenants and agrees to fully indemnify and hold harmless, the **CITY** for any claims for damages or licensing fees claimed by and copyright holder based on the **LICENSEE'S** use of the Licensed Premises.

10. Pedestrian Traffic

10.1 **LICENSEE** shall have the right to regulate pedestrian traffic through the Arneson River Theater. The times and duration of such traffic regulation shall be approved in writing by the La Villita Manager.

11. Security

11.1. Security requirements of La Villita:

11.1.1 All events in La Villita require San Antonio Police Department (SAPD) Officer(s) at a rate to be determined by the law enforcement office. The minimum duty time required is three (3) hours.

11.1.2 Arrangements for such security shall be verified to **CITY'S** satisfaction at least fourteen (14) calendar days before commencement of the term of this license.

11.1.3 **LICENSEE** understands and agrees that the SAPD Officer(s) are subcontractors of **LICENSEE**. As such, the **CITY** accepts no liability for any cause, action, or loss related to agreements or arrangements between the SAPD Officer(s) and **LICENSEE**.

11.1.4 **LICENSEE** understands and agrees that the duties of the SAPD Officer(s) include protection of the **CITY'S** interests in the Licensed Premises and equipment, as well as monitoring of **LICENSEE'S** operations conducted hereunder.

11.1.5 SAPD Officer(s) must be present from thirty (30) minutes before until thirty (30) minutes after an event. SAPD Officer(s) must be in uniform and must be on duty the entire

duration of the event. No function will be allowed to begin until the required SAPD Officer(s) are on duty.

12. Termination

12.1 **CITY** may cancel the Agreement by giving thirty (30) calendar days written notice upon default of **LICENSEE** in the performance of any covenant or agreement herein contained and the failure of **LICENSEE** to commence to remedy same within fifteen (15) calendar days of receipt of written notice and diligently pursue the remedy.

12.1.1 **CITY** may also terminate Agreement for the following:

12.1.1.1 In the event this Agreement is deemed to be inconsistent with the best public use of the property as determined by **CITY** through passage of an ordinance, or

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

12.2 **LICENSEE** may cancel Agreement by giving thirty (30) calendar days written notice.

13. Licensee's Responsibilities Related to Concessions

13.1 **LICENSEE** shall not use the concession stand located on the Licensed Premises for storage except as authorized in Article 6. Further, **LICENSEE** shall keep concession stand clean and sanitary during its use for Fiesta Noche Del Rio events authorized herein.

13.2 **LICENSEE** shall purchase and maintain current all necessary Federal, State, and Local licenses and permits at its sole expense.

13.3 **LICENSEE** shall insure that its designated representative is available for immediate contact and liaison with the La Villita office and with those making deliveries of concession merchandise to be sold at Fiesta Noche Del Rio performances.

13.4 **LICENSEE** shall insure that its concession contractor(s) comply with Villita Street and Presa Street parking regulations. **LICENSEE** shall further insure that its concession contractor(s) coordinate delivery timers with the La Villita Manager to avoid conflicts with other La Villita event or with La Villita shop tenant's operations. **LICENSEE** shall insure that all concession contractor(s) comply with City, State, and Federal and all other health, safety, licensing and permitting requirements at their sole expense.

13.5 **LICENSEE** and/or **LICENSEE'S** concession contractor(s) shall provide sufficient concession employees to adequately service patrons. No **CITY** employees may be directly or indirectly associated with the management of the concession operations.

14. Indemnification

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

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

15. Insurance Requirements

15.1 Prior to the commencement of any work under this Agreement, **LICENSEE** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Center City Development & Operations Department, which shall be clearly labeled "Alamo Kiwanis Charities, Inc. – Fiesta Noche Del Rio" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the **CITY'S** Center City Development & Operations Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

15.2 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 whereby **CITY** may incur increased risk.

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

TYPE	AMOUNTS
Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/ \$500,000
Broad form Commercial General Liability Insurance to include coverage for the following: Premises/Operations Independent Lessees Products/Completed Operations Personal Injury Contractual Liability Damage to property rented by LESSEE	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 aggregate

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

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

City of San Antonio
Attn: Center City Development & Operations Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

15.5.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

15.5.2 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;

15.5.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

15.5.4 Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

15.7 In addition to any other remedies the **CITY** may have upon **LICENSEE** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE**

demonstrates compliance with the requirements hereof.

15.8 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 sub **LICENSEE's** performance of the work covered under this Agreement.

15.9 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.

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

15.11 **LICENSEE** and any Sub **LICENSEEs** are responsible for all damage to their own equipment and/or property.

16.No Assignment

16.1 This License is personal to the **LICENSEE**. Except as authorized herein, it is non-assignable, and any attempt to assign this **LICENSEE** without approval by City Council through the adoption of a **CITY** ordinance will terminate all privileges granted to **LICENSEE** hereunder.

17.Relationship of Parties

17.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by a third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the parties hereto create a relationship other than the relationship of Licensor and **LICENSEE**.

18.Separability

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

19.Taxes and Licenses

19.1 **LICENSEE** shall pay, on or before their respective due dates, the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon **LICENSEE** or upon **LICENSEE'S** business or upon any of the **LICENSEE'S** property

used in connection therewith and shall maintain in current status all Federal, State, and local licenses and permits required for the activities authorized herein.

20. Conduct and Appearance of Employees

20.1 Any employee in LICENSEE'S activities authorized hereunder who may be deemed to be discourteous or objectionable on reasonable grounds shall be removed from the Licensed Premises on demand by CITY. CITY likewise reserves the right to eject any objectionable person or persons, including LICENSEE'S employees, from or about the Licensed Premises, and upon the exercise of this authority through the CITY'S agents or employees, LICENSEE hereby waives any right and all claims for damages against CITY or any of its agents, officials, or employees by reason of such action.

21. Reservations by City

21.1 CITY reserves the right to enter the Licensed Premises at all reasonable times for the purpose of examining, inspection or making repairs as herein provided. LICENSEE shall not be entitled to an abatement, inspection or making reduction of fee consideration by reason of such entry, nor shall said entry be deemed to be an actual or constructive eviction of LICENSEE from the Licensed Premises. Should construction or other activity by CITY prevent LICENSEE'S use of the Licensed Premises for the purposed outlined herein for longer than ten (10) calendar days, LICENSEE shall deduct from payment to CITY and with CITY'S approval, the loss of revenue based on the previous year's income from the impacted area.

21.2 LICENSEE must provide CITY access to all areas. Should LICENSEE wish to secure certain areas, LICENSEE must obtain written approval from La Villita Manager and provide La Villita Manager with copy of keys.

21.3 No provision of this Agreement shall operate in any manner to prevent CITY from permitting displays, tournaments or amusements or River Walk parades for the benefit of the public outside the Licensed Premises.

21.4 CITY Park Police, La Villita maintenance staff and other safety personnel shall have the right of entry on and into the Licensed Premises as needed to investigate any circumstances, conditions or person that may appear to be suspicious. LICENSEE shall cooperate with all requests by such personnel to facilitate public safety and orderly conduct by persons in the River Walk area. LICENSEE expressly understands and agrees that CITY has not agreed to act and does not act as insurer of LICENSEE'S property and does not guarantee security against theft, vandalism, or injury of whatever nature and kind to persons or property.

22. Conflict of Interest

22.1 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 the City. An officer or

employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

22.1.1a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

22.1.2 an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or

22.1.3 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.

22.2 **LICENSEE** warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents do not cause a City employee or officer to have prohibited financial interest in the Agreement. **LICENSEE** further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

23. Notices

23.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage pre-paid, addressed to:

City of San Antonio
Center City Development & Operations
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Office of the Director

Or at such other address as may have been designated from time to time in writing by the City Manager of the City of San Antonio.

23.2 Notices to **LICENSEE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage pre-paid, addressed to **LICENSEE** at the address designated as follows:

Chairman
Alamo Kiwanis Charities, Inc.
911 North Main, Suite B-4
San Antonio, Texas 78212

24. Parties Bound

24.1 This Agreement shall be binding upon and insure the benefit of the parties hereto only.

25. Approval of City

25.1 Whenever this Agreement calls for approval by **CITY**, unless otherwise explained herein such approval shall be evidenced by written approval of the Director.

26. Lien for Rent

26.1 In consideration of the mutual benefits arising under this Agreement, and to the extent allowed by applicable law, **LICENSEE** does hereby mortgage and grant a security interest under the Texas Business and Commerce Code unto **CITY** upon all property of **LICENSEE** now or hereafter placed in or upon the Licensed Premises (except such part of any property or merchandise as may be exchanged, replaced or sold from time to time in the ordinary course of operations or trade), and such property is hereby subjected to a lien and security interest in favor of **CITY** and shall be and remain subject to such a lien and security interest of **CITY** for payment of all rents and other sums agreed to be paid by **LICENSEE** herein. At **CITY'S** request **LICENSEE** shall execute and deliver to **CITY** a financing statement appropriate for use under said Code. Such lien and security interest shall be in addition to and cumulative to **CITY'S** liens provided by law.

27. Gender

27.1 Word of any gender used in this Agreement shall be held and construed to include any other gender, and work in the singular number shall be held to include the plural, unless the context otherwise requires.

28. Captions

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

29. Entire Agreement

29.1 This Agreement contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements oral or otherwise regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, it's being the intent of the parties that neither shall be bound by any term, condition, or representation no herein written. However, an amendment, modification or alteration of the terms of this Agreement may be executed and will be binding if in writing, dated subsequent to the date hereof and duly executed by parties hereto.

30. Authority

30.1 If the signer of this Agreement is an entity or other than an individual who is the **LICENSEE**, the signer hereof for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **LICENSEE**.

Intentionally Blank

WITNESS, the signature of the parties hereto in multiple originals, this the _____ day of _____, ~~2018~~ (Commencement Date).

2019

Licensors:

Licensee:

City of San Antonio, a Texas municipal corporation

Alamo Kiwanis Charities, Inc.

Signature



Signature

Name

Craig A Clayton

Name

Title

President

Title

Date

2-22-19

Date

Attest:

City Clerk

Approved as to Form:

City Attorney

Exhibit I: Event Dates

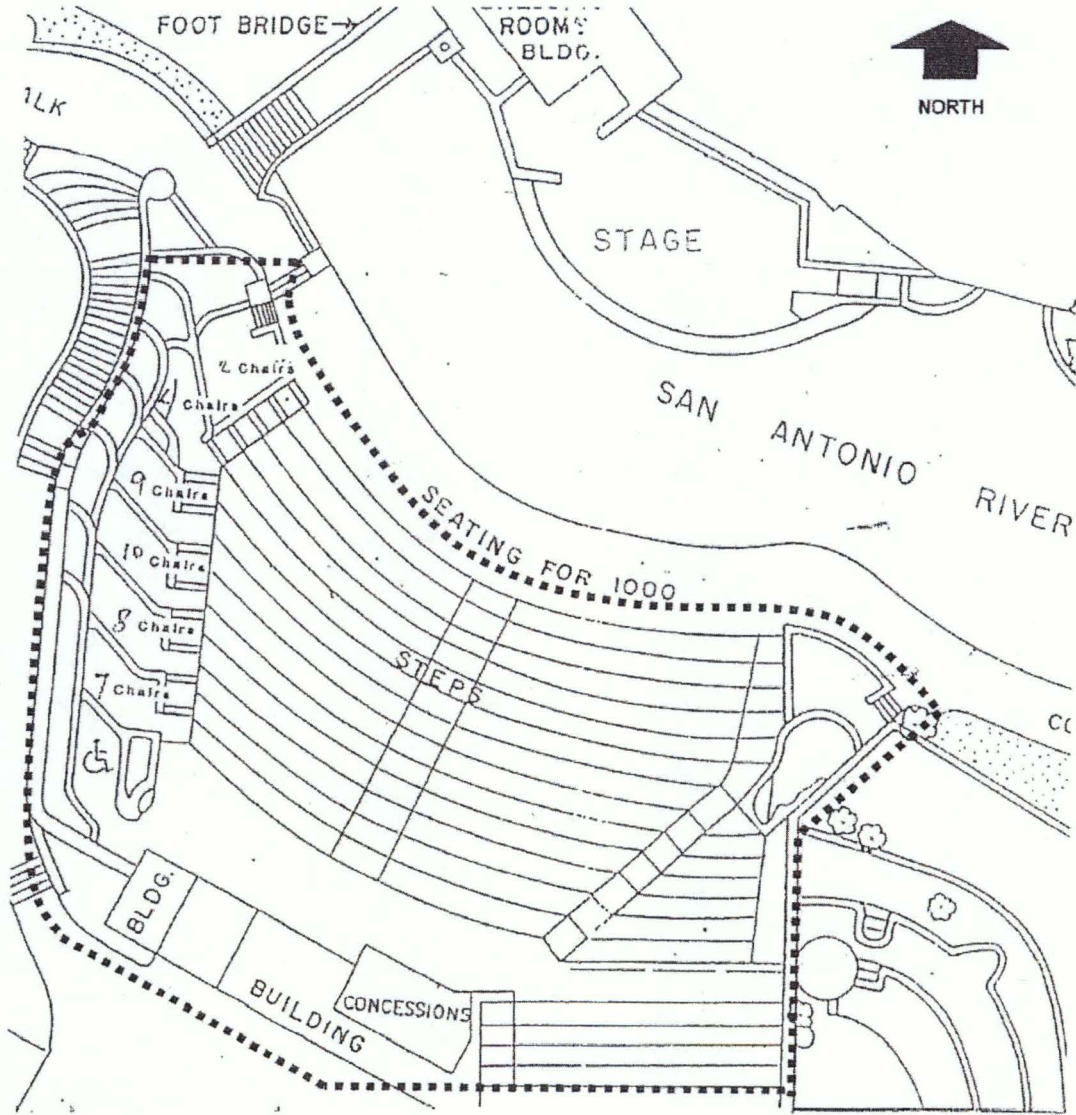
Alamo Kiwanis Club Charities, Inc.
 Fiesta Noche del Rio
 Dates for 2019-2023 Seasons

Month/Year	2019	2020	2021	2022	2023
May		8,15,22,23,29,30	7,14,21,22,28,29	6,13,14,20,27,28	5,12,13,19,26,27
June	16,18,21,22,28,29	5,6,2,13,19,20,26,27	4,5,11,12,18,19,25,26	3,4,10,11,17,18,24,25	2,3,9,10,16,17,23,24,30
July	5,6,12,13,19,20,26,27	3,4,10,11,17,18,24,25,31	2,3,9,10,16,17,23,24,30,31	1,2,8,9,15,16,22,23,29,30	1,7,8,14,15,21,22,28,29
August	2,3,9,10	1,7,8,14,15	6,7,13,14	5,6,12,13	4,5,11,12
Total Days	18	28	28	28	28
	Request of Cos House for last Saturday of each year				
	10-Aug	15-Aug	14-Aug	13-Aug	12-Aug


The first date listed is for rehearsal.
 The second date listed is for dress rehearsal.

Exhibit II:

ARNESON RIVER THEATER



LEGEND

	Designated Ticket Sales Area (Section 3.2)
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