

ORDINANCE

2021 - 06 - 17 - 0478

APPROVING A ONE YEAR LICENSE AGREEMENT WITH THE SAN ANTONIO ZOO, IN AN ESTIMATED ANNUAL AMOUNT OF \$170,000.000, TO PROVIDE THE EMPLOYEE SERVICE APPRECIATION EVENT FOR A PERIOD OF ONE YEAR WITH FOUR RENEWAL OPTIONS.

* * * * *

WHEREAS, the City wishes to execute a License Agreement with the San Antonio Zoo to provide for the employee service recognition event; and

WHEREAS, said License Agreement provides for an initial one-year term, beginning upon execution and City Council approval, with four (4) one (1) year options to renew; and

WHEREAS, the estimated annual cost of this contract is \$170,000.00; **NOW THEREFORE:**

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

SECTION 1. The City Manager or designee is hereby authorized to execute the license agreement with the San Antonio Zoo to provide the employee service recognition event, at an estimated annual cost of \$170,000.00. A copy of the Agreement is attached hereto and incorporated herein as **Exhibit A**. The terms and conditions of the Agreement are hereby approved.

SECTION 2. Funding in the amount of \$70,000.00 for this Ordinance is available in Fund 11001000, Cost Center 1014010003 and General Ledger 5201040 as part of the Fiscal Year 2021 Adopted Budget approved by City Council.

SECTION 3. Additional funding for future years is contingent upon City Council approval of the Fiscal Year 2022 Budget and subsequent budgets that fall within the term length of this contract.

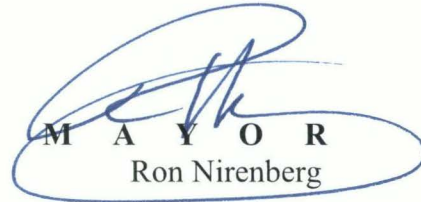
SECTION 4. Payment is authorized to San Antonio Zoo and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.


SECTION 6. This Ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

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PASSED AND APPROVED this 17th day of June, 2021.

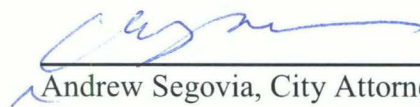

M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

June 17, 2021

Item: 35

File Number: 21-3909

Enactment Number:

2021-06-17-0478

Ordinance authorizing the execution of a license agreement between the City of San Antonio and San Antonio Zoo for a period of one (1) year, with up to four (4) one-year (1) renewal options for the Annual Employee Service Appreciation Event for an estimated annual amount of \$170,000.00 for the 2021 Event and approximately \$100,000.00 for subsequent annual events. Funding in the amount of \$70,000.00 is available in the FY 2021 General Fund Budget and funding for subsequent years is contingent upon City Council approval of the annual budget. [Ben Gorzell, Chief Financial Officer; Renee Frieda, Interim Director, Human Resources]

Councilmember Ana E. Sandoval made a motion to approve. Councilmember John Courage seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo,
Cabello Havrda, Sandoval, Pelaez, Courage and Perry

Abstain: 1 Bravo

KMC
06/17/21
Item No. 35

EXHIBIT A

MASTER SPECIAL EVENT LICENSE AGREEMENT BETWEEN
SAN ANTONIO ZOO
AND THE
CITY OF SAN ANTONIO

This Agreement is made by and between the City of San Antonio, a Texas Municipal Corporation, acting by and through Erik Walsh, City Manager, with an address of 100 Military Plaza, San Antonio, Texas, 78205 (hereinafter referred to as CITY") pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2021 and San Antonio Zoo, 3903 N. St. Mary's Street San Antonio, TX 78212-3199 (hereinafter referred to as "COMPANY").

For each Event between the Parties, an Exhibit 1, attached hereto and incorporated by reference, will be mutually agreed upon and signed by each party. All of the terms and conditions of this Agreement shall govern each Event as described in Exhibit 1.

In consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereby enter into this Agreement for the limited purposes and upon the terms, provisions, and conditions set forth.

I. DEFINITIONS

I.1 The following definitions shall apply to this Agreement:

- a) "Actual Attendance" shall mean the actual number of persons who attend an Event and shall be based on the number of tickets for the Event that are redeemed at the zoo's entrance gates.
- b) "Deposit" shall mean the amount described in the attached Exhibit 1.
- c) "Estimated Attendance" shall mean the number of persons CITY estimates will attend an Event as described in the attached Exhibit 1.
- d) "Event" shall mean those CITY activities more fully described in the attached Exhibit 1.
- e) "Event Date(s)" shall mean the date described in the attached Exhibit 1.

II. LICENSE

- 2.1 Subject to the terms and conditions of this Agreement, COMPANY grants to CITY a non-exclusive license to use facilities at the Zoo designated by COMPANY on the Event Date(s) for the Event described in the attached Exhibit 1. CITY will conduct the Event in accordance with this Agreement. CITY acknowledges that COMPANY makes no express warranties concerning, without limitation, the condition of the Zoo or its suitability for any particular purpose. CITY has had the opportunity to inspect the Zoo.

III. PAYMENT

- 3.1 The Deposit is due October 7 after execution of the attached Exhibit I to this Agreement. This Agreement shall be effective when the attached Exhibit I is executed by CITY and an authorized representative of COMPANY. The entire Event Fee, less any Deposit paid, shall be due and payable by the date described in the attached Exhibit I. All payments are due at COMPANY'S address described in the attached Exhibit I.
- 3.2 CITY may cancel this Event and receive a refund of the Deposit, only if COMPANY receives cancellation notice at least sixty (60) days before the Event Date described in the attached Exhibit I and to the extent COMPANY has not incurred any expenses preparing for the Event.
- 3.3 Except as otherwise specifically provided in this Agreement, each party shall be responsible for any expenses incurred by such party in connection herewith.

IV. SCHEDULING

- 4.1 COMPANY may make reasonable changes to the Event schedule, including, without limitation, the right to provide alternate dates provided it is a Sunday if COMPANY deems it necessary in its discretion. COMPANY shall provide a minimum notice of **ninety (90) days to CITY regarding** any changes to the Event schedule. In the event that an alternate date is deemed necessary, the parties agree to work together to find a mutually agreeable alternative date.

V. RULES

- 5.1 CITY shall conduct the Event in a safe, competent, and professional manner, in accordance with all applicable laws and COMPANY'S rules and policies. The failure of CITY, its employees, agents, and/or guests to strictly comply with this Agreement will be deemed a material breach of this Agreement.

VI. ZOO OPERATIONS

- 6.1 COMPANY may control and operate the Zoo in a manner consistent with the best interests of COMPANY as determined by COMPANY. If COMPANY determines, in its discretion, that CITY is not in control of any situation related to the Event or any of CITY'S guests, COMPANY may take control of such situation to protect COMPANY'S interests in the Zoo and the interests of the Zoo guests.

VII. ALCOHOLIC BEVERAGES

- 7.1 No alcoholic beverages are permitted in the Zoo other than those provided by the licensed caterer serving the Zoo and no CITY member may take any alcoholic beverage out of the Zoo. COMPANY may confiscate any such alcohol beverages found in the Zoo and escort anyone found in possession of such alcoholic beverages out of the Zoo. CITY understands that COMPANY does not permit the consumption or serving of alcoholic beverages to anyone under the age of twenty-one (21) years of age, in accordance with applicable law, and CITY shall comply with all applicable alcohol beverage laws.

VIII. TRADEMARKS

- 8.1 Subject to Section 8.2 below, CITY may make and use photographs, motion picture films, videotapes, and/or audio recordings of the Event ("CITY'S Work") solely for CITY'S internal, noncommercial use.
- 8.2 The COMPANY trade name, trademarks, service marks, designs, artwork, advertising, marketing, and promotional concepts as referred to herein (collectively, the "Company Trademarks") shall remain the property of COMPANY. Any and all rights in the above under trademark or copyright law or other property rights shall inure to the benefit of and be the exclusive property of COMPANY. All proposed uses by CITY of any Company Trademarks shall be subject to COMPANY'S review and prior written approval. If COMPANY grants to CITY the right to use any of the Company Trademarks, CITY acknowledges that said right is non-exclusive, non-assignable, and non-transferable and only for the term set forth in COMPANY'S grant of permission.

VIII. TERMINATION

- 9.1 If reasonable grounds for insecurity arise with respect to CITY'S performance of this Agreement, COMPANY may in writing demand adequate assurance of due performance. Until COMPANY receives such assurance in writing, it may suspend its performance of this Agreement. If COMPANY does not receive such written assurance within two (2) business days after its request therefore or within such other reasonable period of time it may designate under the then existing circumstances, the failure by CITY to furnish such assurance will constitute a material breach entitling COMPANY to immediately terminate this Agreement.
- 9.2 In addition to any other remedy set forth in this Agreement or otherwise available at law or in equity, either party may terminate this Agreement at any time, effective upon the other party's receipt of termination notice, without prejudice to any other legal rights to which such terminating party may be entitled, upon the occurrence of any one or more of the following:
- a) any material breach of this Agreement by the other party (including, but not limited to, any default in payment by CITY);
 - b) any default by the other party in performance of any of the provisions of this Agreement, which default is not cured within ten (10) days following written notice of such default to the defaulting party; or
 - c) any of the representations or warranties made by the other party in this Agreement proving to be untrue or inaccurate in any material respect.
- 9.3 Termination of this Agreement for any reason provided herein shall not relieve either party from its obligation to perform up to the effective date of such termination or to perform such obligations as may survive termination. Upon termination, any unpaid amounts shall be immediately due and payable to COMPANY. Nothing in this Section 9 shall limit the rights otherwise available to a party arising from the breach of the provisions hereof.

IX. FORCE MAJEURE

- 10.1 CITY shall bear the risk of inclement weather (including threatened inclement weather) and other events beyond COMPANY'S reasonable control ("Force Majeure Event"). If COMPANY cancels the Event because of a Force Majeure Event, COMPANY, in its reasonable discretion, may reschedule the Event for the next available date under a new agreement and apply payments made by CITY hereunder to the amount due under the new agreement; or
- 10.2 The foregoing sets forth COMPANY'S complete responsibility and CITY'S exclusive remedy in the event of a Force Majeure Event.

XI. GENERAL

- 11.1 This Agreement constitutes the final, complete, and exclusive understanding between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements in regard thereto. The parties have not relied upon any promises, warranties, or undertakings other than those expressly set forth in this Agreement. Nothing in this Agreement shall give any person other than the parties to this Agreement or their respective successors or assigns any legal or equitable right, remedy, or claim under this Agreement.
- 11.2 This Agreement cannot be amended or waived except by an agreement in writing signed by authorized representatives of both parties and specifically referring to this Agreement.
- 11.3 The failure of either party to object to or to take affirmative action with respect to any conduct of the other party which is in violation of the terms hereof shall not be construed as a waiver thereof, nor of any subsequent breach or wrongful conduct. The rights and remedies set forth herein are intended to be cumulative, and the exercise of any right or remedy by either party shall not preclude or waive its exercise of any other rights or remedies hereunder or pursuant to law or equity.
- 11.4 If any provision of this Agreement is deemed to be invalid or unenforceable by any court of competent jurisdiction, then the balance of this Agreement shall remain enforceable, and such invalid or unenforceable provision shall be enforced by such court to the maximum possible extent.
- 11.5 The parties shall be and act as independent contractors, and under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.
- 11.6 Neither party shall assign its rights and/or obligations or delegate its duties under this Agreement without the prior written approval of the other party, and any attempted assignment or delegation without such approval shall be void and constitute a material breach. This Agreement, and all of

the terms and provisions hereof will be binding upon, and will inure to the benefit of, the parties hereto and their respective successors and approved assigns.

- 11.7 The provisions of Sections 3 (Payment), 8 (Trademarks), and 11 (General) shall survive the expiration or earlier termination of this Agreement.
- 11.8 No presumption will apply in favor of either party in the interpretation of this Agreement or in the Resolution of any provision hereof.
- 11.9 This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the COMPANY and the CITY created hereunder are performable in Bexar County, Texas. Any legal action or proceeding shall be heard and determined by the U.S. District Court for the Western District of Texas, San Antonio Division.
- 11.10 All notices, consents, requests, demands, and other communications hereunder are to be in writing, and are deemed to have been duly given and received: (a) when delivered in person; (b) three (3) business days after deposit in the United States mail, postage prepaid, return receipt requested; (c) one (1) business day after delivery to an overnight courier service with payment provided for respecting any domestic delivery and three (3) business days respecting any international delivery; or (d) in the case of telex, telecopy, or fax, when sent, verification received, in each case with proof of delivery provided, addressed as provided in the opening paragraph of this Agreement, unless otherwise instructed in writing. In addition, a mandatory copy of any communication alleging a default of breach or default of any kind also shall be sent to Spurs at: Attention: General Counsel.

XII. OTHER SERVICES

- 12.1 The CITY will have the option of purchasing additional activities at the discretion of the CITY; however selections will be based on availability and possible minimums and maximums as outlined by the COMPANY. If CITY'S pre-selected services are unavailable, CITY may, at no additional charge and in its discretion, select an alternate service, subject to availability.

XIII. RENEWAL

- 13.1 The parties will have the option of renewing this license agreement for a period of up to four (4) one year periods after execution, at the discretion of the CITY, and subject to COMPANY'S inventory availability, provided that CITY and COMPANY agree upon the terms thereof and execute and deliver a replacement Exhibit 1 to this Agreement respecting such future Event.
- 13.2 In the event COMPANY or CITY modifies the proposed course outline, an addendum will be created to address each modification.
- 13.3 The addendum will include special event name, special event cost, number of participants, and total special event cost.
- 13.4 The signer of the addendum for COMPANY represents and warrants the full legal authority to execute the addendum on behalf of COMPANY and to bind COMPANY to the terms and conditions herein contained.

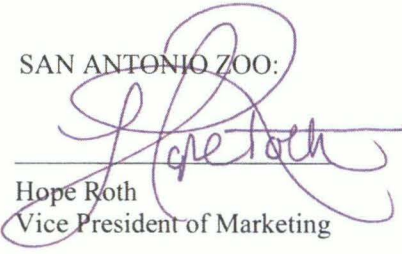
13.5

The signatory for CITY will be the City Manager or designee, and represents and warrants the full legal authority to execute the agreement of behalf of CITY and to bind CITY to the terms and conditions herein contained.

CITY OF SAN ANTONIO:

Erik Walsh
City Manager

SAN ANTONIO ZOO:



Hope Roth
Vice President of Marketing

Approved as to form:

Krista Cover
Assistant City Attorney

EVENT SPECIFICS EXHIBIT 1

In the event COMPANY or CITY modifies this Exhibit 1, an addendum will be created to address each modification. The CITY will have the option of purchasing additional activities at the discretion of the CITY; however selections will be based on availability and possible minimum and maximum as outlined by COMPANY. If CITY'S pre-selected services are unavailable, CITY may, at no additional charge and in its discretion, select an alternate service, subject to the availability of the alternate service.

2021 EVENT TERMS:

Event Date: A Sunday, no later than November 7, 2021 with time: 10am-5pm. If no Sunday is available or other agreed upon date is scheduled, the contract is void.

Alternate Plans: Due to COVID-19 restrictions, the CITY and COMPANY can determine an alternative option for a Drive-Thru Zoo could be a possibility, in place of an in-person event at the Zoo. This would take place after hours during weekdays, over the course of several afternoons. Cost is to be determined, but not to exceed the in-person event.

Parking: Parking at the Zoo's three locations is free during Zoo business hours. Option #1: The Zoo Parking Garage is located in between the zoo and Will Smith Zoo School Option #2: a lot under IH-281 and Option #3: the lot near the Train Depot. There are up to a maximum of 1,500 designated lot parking spots.

Estimated Attendance: The City guarantees a minimum of 2,800 tickets purchased for the event date during the agreed term and not to exceed Zoo capacity.

Facility Fee: To be agreed upon by both parties for the use of the event space.

Payment: Event requires a minimum of 2,800 paid admissions, plus applicable sales tax, with total cost of event not to exceed \$170,000.00 for all admission, meal, activities and other selected program inclusions. CITY shall be responsible for no less than 2,800 paid admissions (excluding meal vouchers) and shall be charged for such aggregate minimum admission amount regardless of Actual Attendance.

If CITY requires additional admission and meal tickets, CITY shall call in ticket quantities at least ten (10) business days prior to the day of the Event and be charged at the rate of \$22 per ticket (admission and meal). Admission includes admission to the Zoo and one (1) meal voucher to include (example: hot dog, burger, chips, cookie and beverage). Children under 3 years do not require an admission ticket or meal voucher.

SAN ANTONIO ZOO WILL PROVIDE THE FOLLOWING:

- ☐ Exclusive access to the Zoo, with no other guests this day.
- ☐ Approximately Four Thousand (4,000) Admission Tickets. Children under 3 years of age are excluded from count and do not need an admission or meal voucher.
- ☐ Approximately Four Thousand (4,000) meal vouchers. Additional 18% service fee on cost of meals.
- ☐ Complimentary parking for registered employees, event managers, and speakers in designated lots;
- ☐ AV equipment, if needed;
- ☐ Registration tables at Zoo entrance.
- ☐ The Zoo will facilitate the production of a cobranded T-shirt.
- ☐ Special Experiences for all guests, including but not limited to, Animal Ambassadors (\$150 per 30 min), Unlimited train rides, Unlimited carousel rides.
- ☐ Special Experiences for a limited number of guests, including but limited to, Behind the Scenes experiences (\$40/person), Kangaroo Crossing (\$8/person), Feeding Giraffes (\$5/person).

OTHER NOTES:

- ☐ Sales Tax: Tax Exempt provided CITY provides tax exempt certificate
- ☒ CITY shall pay a deposit of \$70,000.00 one month before the event date. Upon receipt by Company of CITY'S Deposit, COMPANY shall deliver to CITY Four Thousand (4,000 regular admission tickets). COMPANY shall invoice CITY for all remaining expenses and the remaining portion of the Event Fee. CITY shall pay remainder of fees to COMPANY within thirty (30) days of receipt of COMPANY'S invoice.

CITY Contact: Megan Janzen, Employee Engagement Coordinator, San Antonio, TX 78205 Tel: 210-207-6119.

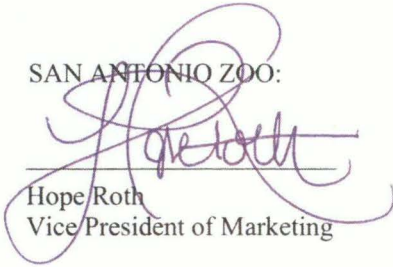
COMPANY Contact: Chris Alvarado, Manager of Sales, Marketing
Event will be billed based on the actual number of tickets redeemed at the time of the event.

The signatory for CITY will be the City Manager or designee, and represents and warrants the full legal authority to execute the agreement of behalf of CITY and to bind CITY to the terms and conditions herein contained.

CITY OF SAN ANTONIO:

Erik Walsh
City Manager

SAN ANTONIO ZOO:



Hope Roth
Vice President of Marketing

Approved as to form:

Krista Cover
Assistant City Attorney