

STATE OF TEXAS §
COUNTY OF KENDALL § LEASE AGREEMENT
CITY OF BOERNE §

This LEASE AGREEMENT (the "Lease" or the "Agreement") is made this 1st day of May 2023, between the **CITY OF BOERNE** (the "Lessor"), whose address is 140 City Park Road, Boerne, Texas, 78006-1677, and the **FRIENDS OF THE CIBOLO WILDERNESS, INC.** (the "Lessee"), a non-profit corporation incorporated under the laws of the State of Texas, whose address is 140 City Park Road, Boerne, Texas 78006-1677 ("Parties" when referencing both Lessor and Lessee, or "Party" separately).

WHEREAS, the Cibolo Wilderness Area (in the area described in Exhibit A) has been recognized by the Lessor as an area that shall be maintained and developed for recreational usages, wildlife refuge and nature center for the benefit of the public; and

WHEREAS, the Lessor recognizes the unique conservation value of the Cibolo Wilderness Area including the Marsh, the Prairie, and Riparian Areas, and agrees that that protection of these areas is essential; and

WHEREAS, the Lessor recognizes the importance of conserving Herff Spring, a unique artesian spring, located on the Kendall County Fairgrounds, which is the headwaters for the Marsh within the Cibolo Wilderness Area, and critical to the wetland habitat; and

WHEREAS, the Lessor recognizes the importance of protecting the Tree Tunnel on City Park Road, a designated iconic entrance to the Cibolo Wilderness Area, specifically created in 1990, to establish a visual barrier from the road, to provide vital habitat for Marsh flora and fauna, and a recognized destination for birders nationally; and

WHEREAS, the Lessor has the exclusive responsibility for the management of the Cibolo Wilderness Area for the benefit of the community and the public, and Lessor recognizes the benefits the community can gain through education and study of wilderness, flora, fauna and wildlife; and

WHEREAS, the Lessor wishes to promote conservation of natural resources through education;

WHEREAS, the Lessee provides a nature center and promotes conservation of natural resources in the Boerne area through education and public access; and

WHEREAS, the Lessee was created to perform the necessary and critical function of gathering and disseminating information on the flora, fauna, and wildlife in the Cibolo Wilderness Area and to provide such data to Lessor and others, which information is valuable in the management of the Cibolo Wilderness Area; and

WHEREAS, the Lessor has determined that it is in the public interest for Lessee to manage portions of the Cibolo Wilderness Area due to its specialized knowledge and expertise; and

WHEREAS, the Lessor and Lessee have agreed that Lessee shall be the site manager for designated portions of the Cibolo Wilderness Area, conducting public tours, classes, studies, and other activities as well as managing day-to-day operations of the Nature Center and that such activities shall be consistent with standard park use. Lessee activities shall promote community education, scientific research, and preservation, protection, and enhancement of the wildlife, flora, and fauna in the Boerne area;

WITNESS, that the Lessor does by these presents lease and demise unto the Lessee the property described in *Exhibit A* (All of the said property collectively referred to as the "Premises").

This Lease Agreement contains the following terms:

1. This Lease shall be for a term of twenty-five (25) years beginning upon execution and ending on the on the same date twenty-five (25) years hence, with Lessee paying therefor the sum of Ten and No/100 Dollars (\$10.00) each year as rental (the "Rent"), with the payment due and payable on the 1st day of December 2026, with like annual payments due and payable on the 1st day of December of each successive year during the term of this Lease at the Lessor's address listed herein.
2. Negotiations for the renewal of this Lease between the Lessee and the Lessor shall begin ten (10) years prior to the date of the end of the current lease. Should Lessee or City Council reject such lease renewal, Lessee and Lessor will take reasonable efforts during the remaining term of the lease to renew the lease. Subsequent alternative lease submissions by the Lessor shall be accepted or rejected by Lessee within ninety (90) days.
3. Lessor remains the owner of the property and has not delegated its governmental responsibility or authority to Lessee. Nothing herein shall be construed to give Lessee authority to overrule decisions of the City Council of the City of Boerne.
4. Upon expiration of the Lease term, Lessee shall deliver Premises to Lessor in the same condition as they were received (as improved over the term of the Lease), reasonable wear and tear excepted.
5. This Lease does not transfer title, or legal or equitable ownership of the Premises to the Lessee, and Lessor retains all rights of such privilege.
6. Lessee shall not sublet the Premises, or any part thereof, to any person or persons whatsoever, without prior written authorization from Lessor. Any such attempt to sublet shall be considered null and void. Rental of all or part of the Premises to outside parties for various short-term events of one week (7 days) or less shall not be considered a sublet.
7. Lessee shall be entitled to collect use charges for various events to be held on the Premises, subject to the funds collected being used for the operation and maintenance of the facilities and programs.
8. Insurance:
 - A. The Lessee shall procure, at its own expense, liability insurance with a minimum per occurrence limit of One Million Dollars (\$1,000,000.00) and building contents insurance to cover the

Lessee's contents and equipment at the Premises. Lessee acknowledges that over the period of the lease, the liability limit may become inadequate. The Lessor may, with good cause, require the Lessee to maintain additional insurance coverage to protect the Lessor's interest. In such event, the Lessor shall provide the Lessee with written notice of any coverage limit change to be required insurance on the premises. The Lessee shall obtain such coverage within ninety (90) days of its receipt of such notice from the Lessor. Except as may be required by statute, the total coverage limit required under this Agreement will not exceed Three Million Dollars (\$3,000,000). The same notice and execution provisions shall apply. Lessor acknowledges that Lessee has significantly improved the Nature Center premises for the benefit of the citizens of Boerne. Lessor will maintain property insurance through a commercial carrier or self-insurance arrangement on the Premises. Lessor will, on an annual basis, by utilizing the annual Re-Rate Exposure Summary, ensure that the property is insured at the replacement value. Lessor will make modifications as necessary as a result of the annual Re-Rate Exposure Summary and provide Lessee with documentation of such. In the event of a property loss to the premises, Lessor agrees to dedicate all funds generated by the City's insurance coverage as a result of such occurrence to repair or reconstruct the Premises to its condition immediately prior to such loss within a reasonable period.

B. Liability insurance required hereunder shall name the Lessor as an additional insured. In addition, the Lessee shall provide the Lessor with a copy of each insurance policy required hereunder along with proof that all premiums for each such policy or policies shall have been paid by the Lessee.

9. Consistent with the purpose and goals set out above for the Cibolo Wilderness Area, the Lessee shall, at its sole cost and expense, use reasonable efforts to repair and maintain the Premises in good condition at all times during the original term and any renewal term of this Lease, maintenance of the grounds and property so leased shall be joint responsibility of Lessor and Lessee as outlined, and agreed upon, in the Operational and Maintenance Agreement (*EXHIBIT B*).

10. **THE LESSOR SHALL NOT BE LIABLE TO LESSEE'S EMPLOYEES, AGENTS, INVITEES, LICENSEES OR VISITORS, OR TO ANY OTHER PERSON, FOR ANY INJURY TO SUCH PERSON OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES CAUSED BY THE NEGLIGENCE OF LESSEE UNDER THE AGREEMENT, ITS AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES UNDER THE EXPRESS OR IMPLIED INVITATION OF THE LESSEE OR CAUSED BY STRUCTURES, BUILDINGS, SIGNS, ADDITIONS, IMPROVEMENTS, DISPLAYS AND OTHER ITEMS BECOMING OUT OF REPAIR, OR THE FAILURE OR CESSATION OF ANY SERVICE PROVIDED BY LESSOR UNDER THE AGREEMENT. THE LESSEE AGREES TO INDEMNIFY AND HOLD HARMLESS THE LESSOR OF AND FROM ANY LOSS, EXPENSE OR CLAIM ARISING OUT OF ANY SUCH DAMAGE OR INJURY, INCLUDING THE LESSOR'S REASONABLE ATTORNEYS' FEES INCURRED THEREBY; EXCEPT IN THE CASE OF AN INTENTIONAL OR NEGLIGENT ACT OF LESSOR, AGENTS, SERVANTS, OR ITS EMPLOYEES. THIS ENTIRE SECTION DOES NOT APPLY TO ANY AND ALL**

ACTIVITIES UNDERTAKEN UNDER PARAGRAPH 15 OF THE AGREEMENT.

11. Lessee shall not add any fixtures, structures, or items that could be considered real property to the Premises without the express prior written consent of the City Manager or his designee and which shall not be denied without cause.
12. Lessee shall be fully responsible for its employees, including meeting all state and federal requirements for minimum wage, income tax withholding, workers' compensation, insurance, and all city, state, and federal requirements governing employer/employee relations. Lessee hereby certifies to Lessor that it shall be and is in compliance with all such applicable regulations, laws and requirements. Failure to comply with this clause shall constitute a violation on the part of Lessee and shall entitle Lessor to terminate this agreement after first giving Lessee notice and following requirements in accordance with the provisions of paragraph 18 below.
13. Any sign placed on the Premises shall be in conformance with the conditions set out in the then current ordinances of the City of Boerne. Lessor shall provide permanent signage on Highway 46 at City Park Road indicating the directions to the Cibolo Nature Center.
14. No later than May 1 of each year, beginning on May 1, 2023, Lessee shall provide to Lessor an annual activity report to include the following items and any other items as agreed by the Parties:
 - a. Number of out-of-town visitors to the facility;
 - b. Total number of people using or visiting the facility;
 - c. The type, description and number of programs held and attendance at each;
 - d. List of any physical improvements made during the year;
 - e. Proposed physical improvements and programs for next twelve (12) months;
 - f. Annual budget for the Lessee; and
 - g. Additional information regarding the operation of the facility that may be necessary for the Lessor to perform its fiduciary duties for the citizens of Boerne. Such information must be requested by the Lessor no later than thirty (30) days prior to May 1st of each year.
15. Lessor shall have the full right of access to the Premises subject to the exercise of its governmental authority. Lessor agrees to make reasonable attempts to exercise the right of access to the leased premises at such times as are the least disruptive to Lessee's use and enjoyment of the premises.
16. The Lessee shall be liable for any and all taxes levied against the personal property, the trade fixtures or other improvements placed on the Premises by the Lessee. In the event that taxes of any kind or nature are levied against the Lessor or the Lessor's property, with respect to the Premises and/or the Improvements, and if the Lessor elects to pay the same or incurs any loss occasioned thereby, the Lessee shall within thirty (30) days reimburse the Lessor, upon the Lessor's written demand, the funds for these payments it makes on the Lessee's behalf or losses it sustains because of the Lessee's liability for any such taxes, including the Lessor's reasonable attorneys' fees incurred thereby.

17. The Lessee shall be responsible for the monthly payment of any and all expenses for utilities utilized by or for the benefit of the Lessee.
18. Upon the Lessee's breach of any covenant set forth in this Lease or upon any violation by the Lessee of any ordinance of the City of Boerne, upon written notice of such violation or breach, and upon the failure of the Lessee to remedy such violation or breach, within a reasonable period of time not to exceed thirty (30) days, within fifteen (15) days thereafter, the Parties shall conduct a conference to attempt resolution thereof. If the resolution conference is unsuccessful, Lessor shall have the option to pursue any one or more of the remedies, without making notice of demand on the Lessee, as follows: (1) to enter upon and take possession of the Premises, by any means whatsoever, without being liable for any claim of damages, (2) to terminate this Lease, in which event the Lessee shall immediately surrender the Premises to the Lessor, (3) to seek any other remedies at law or in equity, including, but not limited to, the filing of a lawsuit for monetary damages sustained by the Lessor occasioned by the Lessee's breach of this Lease, (4) to prosecute the Lessee for any violation by the Lessee or its employees, agents, invitees, licensees, and/or visitors of any applicable ordinance, regulation or statute of any governmental authority. Termination of this Lease, pursuant to the Subsection (2) of this Paragraph, shall be effective upon the Lessor's providing written notification of such to the Lessee, at the Lessee's address listed herein, by certified mail, return receipt requested, and deposited in an official depository in the care and custody of the United States Postal Service.

Given the purpose and goals to the benefit of the public as stated above, the Lessor and Lessee agree that irreparable damage for which monetary damage, even if available, would not be an adequate remedy in the event that the Lessor does not perform the provisions of this Agreement (including terminating the Lease prior to the time period specified in this Agreement). According, the Parties hereto acknowledge and agree that the Lessee shall be entitled to specific performance and/or other equitable relief to prevent breaches of this Agreement, and to enforce specifically the terms of this Agreement.

Upon the Lessor's breach of any covenant set forth in this Lease, the Lessee will request, in writing, remedy of such breach within a reasonable period not to exceed thirty (30) days, and upon the failure of the Lessor to remedy such violation or breach, within a reasonable period of time not to exceed thirty (30) days, within fifteen (15) days thereafter the Parties shall conduct a conference to attempt resolution thereof. If the resolution conference is unsuccessful, Lessee shall have the option to enforce specifically the terms of the Agreement, in addition to any remedy to which the Lessee is entitled at law or in equity.

19. Notice. All notices and information required to be given under this Agreement shall be given in writing and shall be effective when hand-delivered or on the 3rd day after being deposited in the United States mail, certified mail, postage prepaid and addressed to the Party to whom the notice is to be given at the addresses shown below. Any Party may change its address for notices under this Agreement by giving formal written notice to the other Parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address.

TO THE CITY:
City of Boerne
Attn: City Manager
P.O. Box 1677
447 N. Main Street
Boerne, Texas 78006-1677

TO THE FRIENDS OF THE CIBOLO WILDERNESS, INC.
Attn: Chief Executive Officer
140 City Park Rd.
Boerne, Texas 78006

20. Force Majeure. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which causes are hereinafter referred to as "Force Majeure"), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress or (b) a Party's financial inability to perform its obligations hereunder.
21. The construction and validity of this Lease shall be governed by the laws of the State of Texas. Venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction in Kendall County, Texas.
22. In the event any portion of this Lease is deemed illegal, invalid or unenforceable, then the remainder of this Lease shall not in any way be affected thereby and may be enforced to the greatest extent permitted by applicable law.
23. In the event the Premises shall fall into a state of structural disrepair or disuse such that Lessor becomes reasonably concerned with the value and safety of the property where it is not in keeping with the purpose and goals of the Cibolo Wilderness Area as specified above, Lessor may terminate this Agreement after first giving Lessee notice and following requirements in accordance with the provisions of paragraph 18 above.
24. In the event Lessee changes its corporate structure in any way, Lessor may consider such change a material breach of a covenant of this Lease and may elect to proceed under the under paragraph 18 to terminate the Lease.
25. In the event Lessee's mission changes in any way from that declared in the preamble and Whereas clause findings contained herein, Lessor may consider such change or changes a material breach of a covenant of this Lease, and may elect to proceed under paragraph 18 to terminate the Lease.
26. Lessee shall maintain the Premises in a clean and sanitary condition, presenting a good appearance

to the public. The Lessee shall be responsible for complying with all applicable provisions of city, state and federal laws relating to health and safety.

27. The Lessee is prohibited from the construction and/or operation of underground petrochemical storage tanks, stock pens, feed lots, dump grounds, privies, cesspools, septic tank drain fields, drilling of wells of any depth and all other construction or operations that could create an unsanitary condition within one hundred fifty (150 feet) of the City of Boerne's Well Number 11.

28. **Public Releases and Statements**

- a. The Lessor and Lessee hereto are partners in the protection of natural resources for the benefit of the public.
- b. This section applies only to the Lessor and Lessee which include only those specifically authorized to speak for on behalf of such Party.
- c. Neither Lessor and Lessee or those persons authorized to speak for or on behalf of such Party, including Board representatives and authorized staff, shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other Party.
- d. Neither Lessor and Lessee shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other Party.
- e. No Lessor and Lessee will use the name, mark or logo of the other Party in any advertisement or printed solicitation without first having prior written approval of the other Party.
- f. The Lessor and Lessee shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other Party without that Lessor or Lessee's prior written approval.
- g. Each of the Lessor and Lessee covenants and agrees that during the term of this Agreement, neither Lessor or Lessee nor its designated officials, shall in any way disparage, call into disrepute, or otherwise defame or slander the other Party or such other Party's subsidiaries, affiliates, successors, assigns, officers, directors or members of the governing body and key employees, in any manner that would damage the business or reputation of such other Parties, their products or services or their subsidiaries, affiliates, successors, assigns, officers, directors or members of the governing body, and key employees.
- h. In addition, the Lessor and Lessee agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

LESSEE:

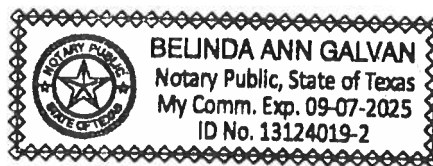
FRIENDS OF THE CIBOLO WILDERNESS, INC.

BY: Carolyn Chipman Gans

TITLE: CEO

ATTEST:

[Signature], VP of Finance & Administration
Signature and Title The Cibolo



STATE OF TEXAS §
COUNTY OF KENDALL §

BEFORE ME, a Notary Public, on this day personally appeared Carolyn Chipman Gans of the FRIENDS OF THE CIBOLO WILDERNESS, INC., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this: 2 day of May, 2023 ~~December~~ 2022.

[Signature]
Notary Public, State of Texas

LESSOR:

CITY OF BOERNE, TEXAS

BY: _____
Ben Thatcher, City Manager

ATTEST:

Lori Carroll, City Secretary

STATE OF TEXAS §
COUNTY OF KENDALL §

BEFORE ME, a Notary Public, on this day personally appeared BEN THATCHER, City Manager of the CITY OF BOERNE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this: _____ day of December 2022.

Notary Public, State of Texas

EXHIBIT A

The Premises and all other applicable areas are shown as *Exhibit A*, a document jointly agreed by Parties. The width of the tract between the current Cibolo Nature Center and the Agricultural Heritage Center on the east side of the Cibolo Creek shall be seventy-five (75) feet.

Cibolo Lease Boundary Map - Exhibit A

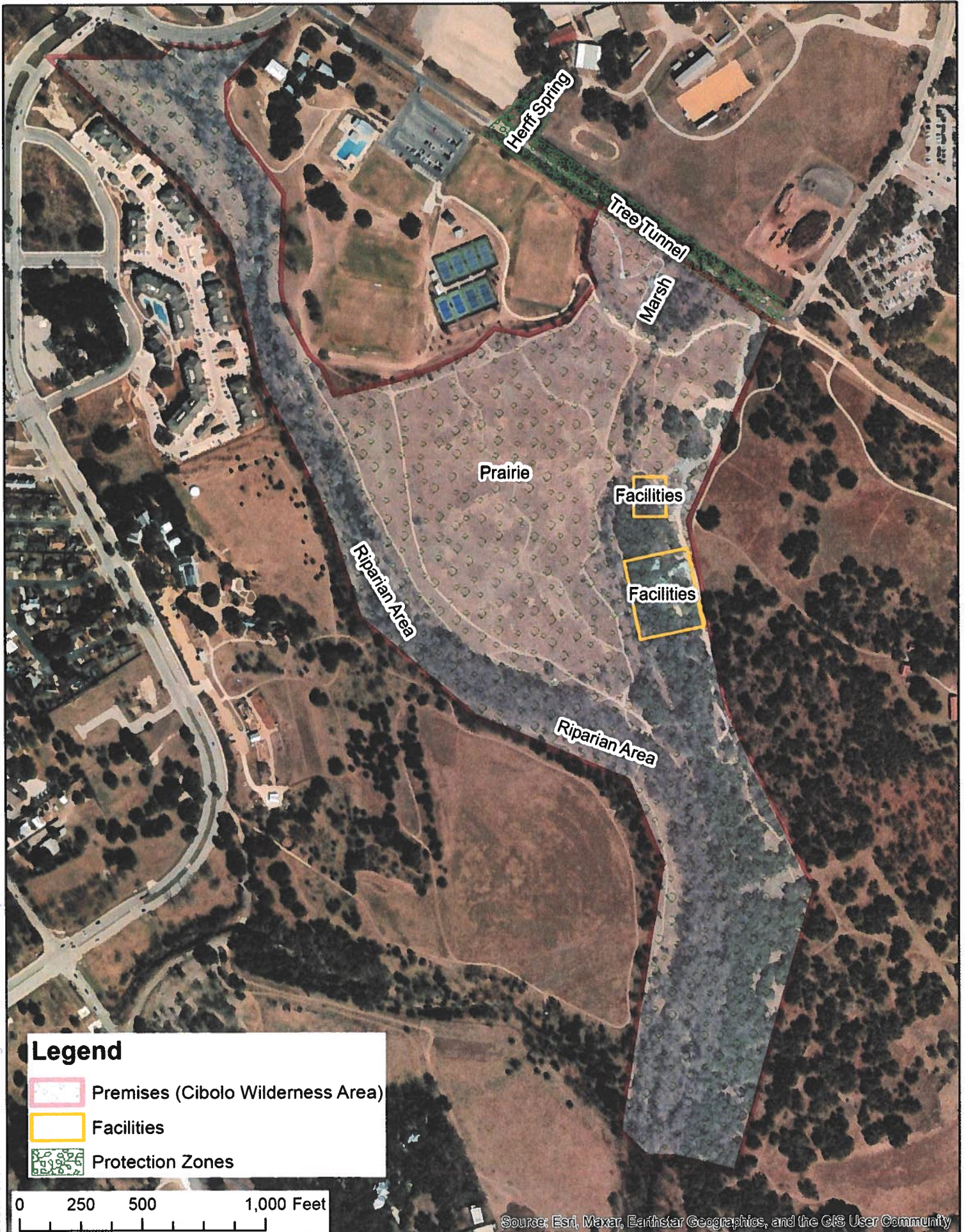


EXHIBIT B
OPERATIONAL AND MAINTENANCE AGREEMENT

This Agreement is made this 1 day of May, 2023 between the CITY OF BOERNE ("City"), and FRIENDS OF THE CIBOLO WILDERNESS ("FCW") or ("Parties" when referenced together). This is an amendment and extension of the Operational Maintenance Agreement between the Parties dated 9.22.2017.

WHEREAS, the FCW will use the Premises of the Cibolo Wilderness Area, as described in Exhibit A, solely to accomplish the mission of FCW, which is to provide a nature center and promote conservation of natural resources in the Boerne area through education and public access; and

WHEREAS, the City desires to assist the FCW in accomplishing such mission; and

WHEREAS, the FCW recognizes that the City will, from time to time, need to perform certain construction projects on the Premises of the CNC for the benefit of the public; and

WHEREAS, the City acknowledges that it will endeavor to complete these and other projects, as necessary, for the good of the public while taking every effort to minimize the impact on FCW's activities;

NOW, THEREFORE, for and in consideration of the mutual promises recited herein, the parties agree as follows:

I. GENERAL TERMS

1.01 The FCW agrees to the following items during the term of this Agreement including but not limited to the following items and any other items as agreed by the parties:

FCW

- a) Shall at its sole cost and expense, repair and maintain the Facilities located within the leased property existing as of the date of this Agreement as denoted by Premises under Exhibit A, or built or constructed any time thereafter by FCW, including the pavilion and restrooms, with the exception of those listed in Section 1.03 of this Agreement.
- b) Shall be responsible for maintaining, clearing, weeding, plantings, etc. of grass areas, bushes, vines, flowerbeds, and other areas of vegetation within the Premises with the exception of those items listed in Section 1.02 of this Agreement.
- c) Shall notify and obtain written approval through e-mail correspondence or other written forms of communication from the City Manager or his designee prior to placement of any buildings, structures, permanent signage, outside lighting, play structures or other items that could be considered real property to the Premises.

This provision applies to any and all improvements to existing buildings, structures, permanent signage, outside lighting, play structures or other items to the extent that such improvements could be considered real property additions.

- d) Shall notify and obtain written approval from the City Manager or his designee, prior to any significant alterations of grounds, roadways, or parking areas.
- e) Shall acquire all appropriate City permits such as for construction, signage, and electrical work, prior to the onset of work.
- f) Shall provide City with an annual schedule of events and activities to include those open to the general public as well as dates when the Facilities would be closed to the general public due to prairie burns, scientific research activities, or for any other reason.
- g) Shall clean the pavilion restrooms and remove trash on all weekdays except weekends and that which are not public holidays (see exception of those listed in Section 1.03 of the Agreement.
- h) Shall be responsible for removal of garbage and solid waste of FCW which exceeds the capacity of FCW's contracted garbage collection.
- i) Shall provide to the City the Facilities' hours of operation.
- j) Shall provide the City with a list of the 24-hour phone numbers of FCW's personnel to be contacted in the event of an emergency.

1.02 The City agrees to the following items during the term of this Agreement:

City

- a) Agrees to mow currently or built or any constructed thereafter established grass trails as needed for the safe use of the park.
- b) Agrees to maintain the board walk in a safe and functional manner by replacing boards when needed and trimming the grass that borders the board walk to eliminate grass and weed encroachment onto the boardwalk.
- c) Agrees to mow a walking path between the trees in the Arboretum a maximum of four (4) times per year.
- d) Will remove any trees that die, or portions thereof, that are discovered and jointly determined by the City Manager or designee, with input from FCW, to be hazardous to the safety of park users;

- e) will provide parking maintenance and road maintenance as needed to maintain a safe public environment.
- f) Will maintain any concrete picnic units, benches, and tables that the City Manager or designee and FCW agree are necessary and the City Manager or designee will remove or demolish any concrete picnic units and tables should the City Manager or designee and FCW determine that they are unsafe or hazardous to the safety of park users.
- g) Will clean the pavilion restrooms and remove trash on weekends and holidays.
- h) Will make reasonable efforts in good faith to avoid and minimize the impacts to the impacts to the Riparian Area (Exhibit C) and other sensitive areas and natural and cultural resources when performing maintenance activities or otherwise working or patrolling the site; and will make reasonable effort to minimize use of public easements through the Cibolo Wilderness Area, including the Riparian Area.

1.03 The City and FCW agree to the following:

- a) At a minimum, the FCW agrees to attend three meetings annually with the Parks and Recreation Director or his designee to discuss maintenance and improvements to the Premises, coordination and consultation between the parties, and opportunities for cooperative and mutually beneficial efforts to promote, improve, and obtain funding for the Premises, including Facilities and its activities, the City's master plan as it pertains to the Cibolo Wilderness Area, and other subjects of common interest.
- b) City and FCW will actively look for opportunities to co-promote programming.
- c) City and FCW will work cooperatively to maintain the health of trees located on City property leased by FCW and will jointly make decisions on any removal of trees.
- d) FCW will submit to City any written request for assistance with the maintenance or construction of fences located on City property leased by FCW. The City will consider each request individually, based upon merit and available funds.
- e) City and FCW will work cooperatively to inspect trails located on City property leased to FCW to determine necessary repairs. Repair projects will be considered individually based upon merit and available funds.
- f) FCW shall provide to the City Manager, or his designee, in writing, written request of special needs such as those under Section 1.01, Section 1.03(d) or (e) or not otherwise covered by this Agreement for consideration. Such requests should be submitted a minimum of fifteen (15) business days in advance of the requested date of action. The City will consider, and act upon, written request of special needs and agrees to respond to FCW's request(s) within five (5) business days.

II. NOTICE

All notices and information required to be given under this Agreement shall be given in writing and shall be effective when actually hand-delivered or on the 3rd day after being deposited in the United States mail, certified mail, postage prepaid and addressed to the Party to whom the notice is to be given at the addresses shown below. Any Party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the Party's address. For notice purposes, each Party agrees to keep the other informed at all times of its current address.

TO THE CITY:

City of Boerne
Attn: City Manager
447 N. Main Street
Boerne, Texas 78006

TO THE FRIENDS OF THE CIBOLO WILDERNESS, INC.

Attn: Chief Executive Officer
140 City Park Rd.
Boerne, Texas 78006

III. FORCE MAJEURE

Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which causes are hereinafter referred to as "Force Majeure"), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, changes in federal or state laws, national strikes, fire, explosion, or generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress or (b) a party's financial inability to perform its obligations hereunder.

IV. NON-DISCRIMINATION CLAUSE

In accordance with present federal and state laws, the FCW shall not discriminate against any invitee, visitor, participant, employee, applicant for employment, or any other person because of race, color, creed, national origin, age, sex, or communicable disease. The FCW shall take affirmative action to ensure that all people are treated without regard to their race, color, creed, national origin, age, sex or communicable disease. The FCW hereby agrees to refrain from any activity in relation to and use of the Premises that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease.

V. INDEMNIFICATION

THE CITY SHALL NOT BE LIABLE TO FCW, ITS EMPLOYEES, AGENTS, INVITEES, LICENSEES, VISITORS, PARTICIPANTS OR TO ANY OTHER PERSON, FOR ANY INJURY TO SUCH PERSON, INCLUDING DEATH OR DISMEMBERMENT, AND/OR DAMAGE TO PROPERTY ON OR ABOUT THE PREMISES CAUSED BY THE NEGLIGENCE, MISCONDUCT OR WILLFUL OMISSION OF FCW, ITS AGENTS, SERVANTS OR EMPLOYEES, OR OF ANY OTHER PERSON ENTERING UPON THE PREMISES OR CAUSED BY STRUCTURES, BUILDINGS, SIGNS, ADDITIONS, IMPROVEMENTS, DISPLAYS AND OTHER ITEMS OR THE PROVISION, FAILURE TO PROVIDE OR CESSATION OF ANY SERVICE PROVIDED BY FCW. THE FCW AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF AND FROM ANY LOSS, EXPENSE OR CLAIM ARISING OUT OF ANY SUCH DAMAGE OR INJURY, INCLUDING THE LESSOR'S REASONABLE ATTORNEYS' FEES AND COURT COSTS INCURRED THEREBY. ADDITIONALLY, THE FCW AGREES TO DEFEND AND INDEMNIFY THE LESSOR FROM ANY CLAIM OR EXPENSE ARISING OUT THE VIOLATION OF ANY LAW, REGULATION OR ORDINANCE BY THE FCW, ITS EMPLOYEES, AGENTS, INVITEES, LICENSEES, VISITORS, PARTICIPANTS OR ANY OTHER PERSON; EXCEPT EXCLUDING ALL ACTIVITIES CAUSED BY ANY AND ALL ACTIVITIES UNDER SECTION 1.02 OF THIS SECTION, AND OTHERWISE, IN THE CASE OF AN INTENTIONAL OR NEGLIGENT ACT OF THE CITY OR ITS EMPLOYEES.

VI. MISCELLANEOUS TERMS

- 6.01 This Agreement does not transfer title/ownership of the Premises to the FCW, and City retains all rights of such privilege.
- 6.02 Notwithstanding the terms of this Agreement, nothing herein shall be construed to give the FCW authority to overrule decisions of the City Council or other appropriate authority of the City of Boerne.
- 6.03 This Agreement made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Kendall County, Texas.
- 6.04 This Agreement is not assignable.
- 6.05 This Agreement may only be amended by written instrument approved and executed by both parties.
- 6.06 The City shall have the right to make inspections at any reasonable time to ensure compliance with Agreement.

- 6.07 City and FCW may cooperate on grant funding applications for grants specifically to be used for improvements at City Park or other park areas within the City of Boerne Park system.
- 6.08 If any section, paragraph, subdivision, clause, phrase, or provision of this contract shall be judged invalid or held unconstitutional the same shall not affect the validity of this contract as a whole, or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.
- 6.09 This Agreement sets forth the agreement of the parties for Operation and Maintenance of the Premises leased in the Lease Agreement between the parties of a portion of the City Park, originally dated November 13, 2006, and thereafter amended, for the operation of the Cibolo Nature Center. However, this Agreement: (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the Lease Agreement; (ii) will not and does not conflict with the terms of the Lease Agreement and in the event of such a conflict the terms of the Lease Agreement control; and (iii) does not modify any of the provisions of the Lease Agreement.
- 6.10 This Agreement shall be for a term of five (5) years beginning on the referenced above and ending on the same date in 2027 subject to renewal thereafter. Each time, beginning 90 days prior to the expiration of this Agreement, the City Manager, or designee, shall enter into negotiations for renewal and/or modification of this Agreement. If no agreement can be made, FCW shall continue to be responsible for operation of the Premises under the terms specified in the Lease Agreement as referenced in Section 4.07.
- 6.11 The Parties hereby state that they have read the terms of this Agreement and hereby agree to the terms and conditions contained herein.

CITY OF BOERNE

By: _____
Ben Thatcher, City Manager

Printed Name: _____

Date: _____

ATTEST:

By: _____
Lori Carroll, City Secretary

FRIENDS OF THE CIBOLO WILDERNESS

By: _____
President, Board of Trustees

Printed Name: John Freud

Date: 5/1/2023

ATTEST:

By: _____
CHRISTINA ROBERTSON, THE CIBOLO

Riparian Area - Exhibit C

