

AGRICULTURAL HERITAGE MUSEUM LEASE AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF KENDALL §

This LEASE AGREEMENT (the "Lease") is made this _____ day of May, 2019 between the **CITY OF BOERNE** (the "Lessor"), whose address is City Hall, 402 E. Blanco, (Post Office Box 1677), Boerne, Texas, 78006-1677, and the **AGRICULTURAL HERITAGE MUSEUM** (the "Lessee"), a non-profit corporation incorporated under the laws of the State of Texas, whose address is Post Office Box 1076, Boerne, Texas 78006.

WHEREAS, the 5.433 acres of land (more or less) comprising the Agricultural Heritage Museum have been recognized by the Lessor as an area that shall be maintained and developed for a historical agricultural museum and arts and cultural center for the benefit of the public; and

WHEREAS, the Lessor has the exclusive responsibility for the development and management of the Agricultural Heritage Museum for the benefit of the community, and Lessor recognizes the benefits the community can gain through education and preservation; and

WHEREAS, the Lessor wishes to promote preservation and understanding of our history, culture, and agricultural heritage and provide a venue where craftsmen, artists and artisans, historians, musicians, poets, reenactors, and other persons can provide cultural enrichment for the people of Boerne and visitors to the City; and

WHEREAS, the Lessor provides an Agricultural Heritage Center and promotes preserving heritage of our ancestors to inspire future generations; and

WHEREAS, the Lessee was created to collect, preserve, and interpret historical implements and machinery to teach present and future generations about vanishing agricultural traditions and to provide such data to Lessor and others; and

WHEREAS, the lessee wishes to expand its public mission to include creation of an arts destination, with assistance from the Hill Country Council for the Arts and other charitable organizations, that will attract more visitors to the premises and provide an enriched educational and cultural environment; and

WHEREAS, the Lessor has determined that it is in the public interest for Lessee to develop and manage an Agricultural Heritage Museum and arts center for the benefit of the public; and

WHEREAS, the Lessor and Lessee have agreed that Lessee shall be the developer and manager for the Agricultural Heritage Museum, conducting public tours, classes, studies, and collecting, preserving, and interpreting historical implements and machinery, as well as managing day-to-day operations of the Agricultural Heritage Museum. Lessee activities shall promote community education, historical research, enhancement of historical implements and machinery, and provide a venue for artistic and cultural events; and

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 ten (10) years beginning on the 1st day of _____, 2019, and ending on the 31st day of _____, 2029, with Lessee paying therefore the sum of Ten Dollars (\$10.00) each year as rental (the "Rent"), with the payment due and payable on the 1st day of _____, 2020, with like annual payments due and payable on the 1st day of ___ of each successive year during the term of this Lease at the Lessor's address listed herein.
2. Lessor grants to Lessee herein the exclusive option to renew this lease for a like term of ten (10) years, upon the expiration of this Lease term. Said option may only be exercised by written request of Lessee's authorized representative to Lessor, which must be received by Lessor not less than thirty (30) days prior to the expiration of the Lease term. Lessor reserves the right to not renew the lease for good cause.
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 or other appropriate authority 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, reasonable wear and tear excepted.
5. This Lease agreement does not transfer title/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 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. The premises shall be used solely for a museum, exhibition building, meeting hall, offices, and/or a venue and outdoor park for arts and cultural events, the display of agricultural equipment and parts, agricultural related historical buildings, and other agricultural related items and for no other purposes (the "Museum"). Any equipment, parts, and/or other items, not necessary to accomplish the stated purpose of the Museum, in the Lessor's sole discretion, may be displayed and/or stored at the Museum only upon the prior written authorization of the Lessor. The AG Museum will be required to obtain permits for special events in accordance with the Parks and Recreation Department permitting process, Ordinance No. 2016-32, adopted August 9, 2016.

9. 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 a higher coverage limit. 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 thirty (30) days of its receipt of such notice from the Lessor. Except as may be required by statute, the coverage limit required will not exceed three million dollars (\$3,000,000). With good cause, the Lessor may require additional insurance coverage to protect the Lessor's interest. The same notice and execution provisions shall apply.

B. Any and all insurance required hereunder shall name the Lessor as a co-loss payee and 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.

10. The Lessee shall, at its sole cost and expense, repair and maintain the Agricultural Heritage Museum 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 annual Operational and Maintenance Agreement (*EXHIBIT B*).

11. 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 or misconduct of Lessee, 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. 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.

12. 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.

13. 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 regulations, laws and requirements. Failure to comply with this clause shall constitute a default on the part of Lessee and shall entitle Lessor to immediately terminate the Lease and take possession of the Premises.

14. Any sign placed on the Premises shall be in conformance with the conditions set out in the ordinances of the City of Boerne. Lessor shall provide permanent signage on Highway 46 at City Park Road indicating the location of the Agricultural Heritage Museum.

15. No later than May 1 of each year, beginning on May 1, 2020, Lessee shall provide to Lessor an annual activity report to include:

- a. Number of out of town visitors to the facility;
- b. Total number of people using and/or visiting the facility;
- c. The type and number of programs held and attendance at such;
- 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 1 of each year.

16. Lessor shall have the full right of access to the Premises subject to the exercise of its governmental authority. Lessor agrees to make all 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.

17. 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 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.

18. The Lessee shall be responsible for the monthly payment of all expenses for electric utilities utilized by the Lessee.

19. 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, the Lessor or its agents, or assigns 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.

20. 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.

21. 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.

22. In the event the Premises shall fall into a state of disrepair such that Lessor becomes concerned with the value and maintenance of the property, Lessor may terminate this agreement after first giving Lessee notice in accordance with the provisions of paragraph 19 above.

23. Lessee shall maintain the Agricultural Heritage Museum in a clean and sanitary condition, presenting a good appearance to the public. The Lessee shall be responsible for complying with all provisions of city, state and federal laws relating to health and safety.

24. 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 150 feet of the City of Boerne's Well Number 10.

LESSEE: Agricultural Heritage Museum

By: _____

Title: _____

ATTEST:

BY: _____

TITLE: _____

LESSOR: **City of Boerne**

By:_____

Title:_____

ATTEST:

BY:_____

TITLE:_____

STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, a Notary Public, on this day personally appeared _____, of THE AGRICULTURAL HERITAGE MUSEUM, 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 ____ day of _____, 2019.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF KENDALL §

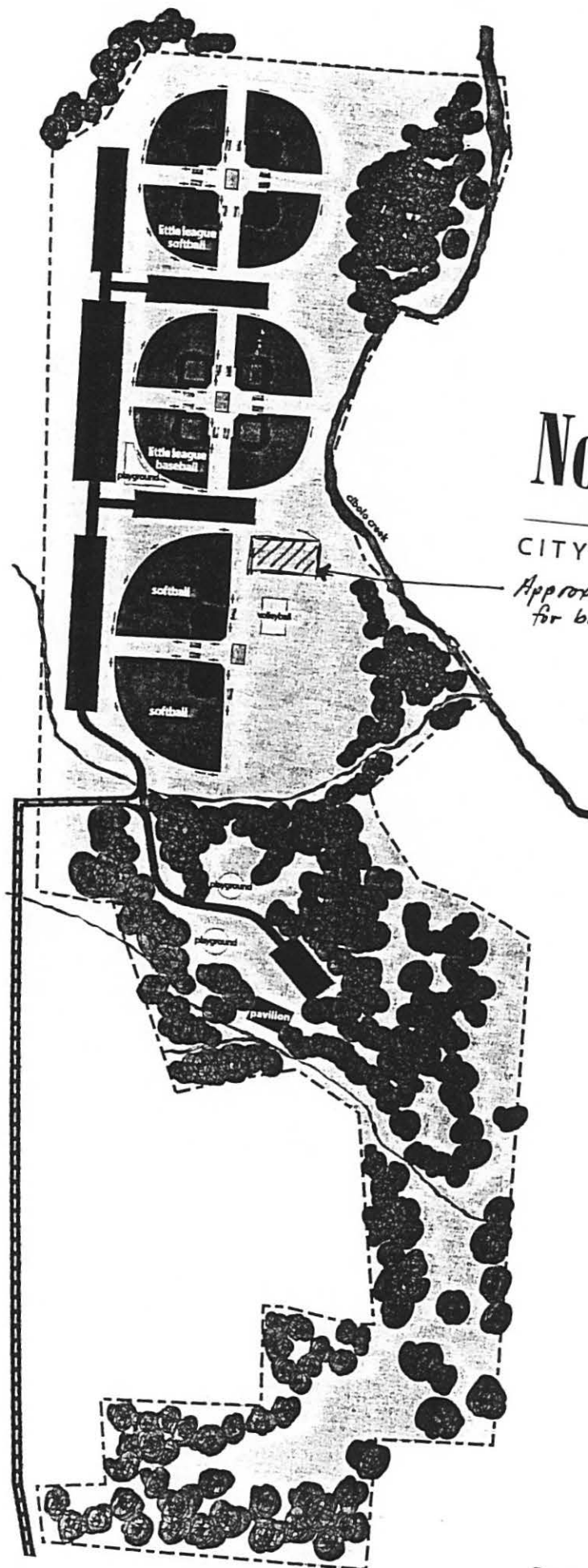
BEFORE ME, a Notary Public, on this day personally appeared _____ of the CITY OF BOERNE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes of consideration therein expressed.

GIVEN under my hand and seal of office this ____ day of _____, 2019.

Notary Public, State of Texas

**THE PROPERTY REFLECTED ON THIS EXHIBIT “A” SHALL BE SURVEYED BY
METES AND BOUNDS DESCRIPTION AND THE PARTIES AGREE THAT UPON
RECEIPT OF THE SURVEY, THE SURVEY SHALL BE ATTACHED HERETO AS
EXHIBIT “A” REPLACING THE DRAWINGS OF THE LEASED PREMISES**

EXHIBIT “A”



Northrup Park

CITY OF BOERNE • TEXAS

*Approximate location of lease premise
for batting cage operations.*

EXHIBIT "A"

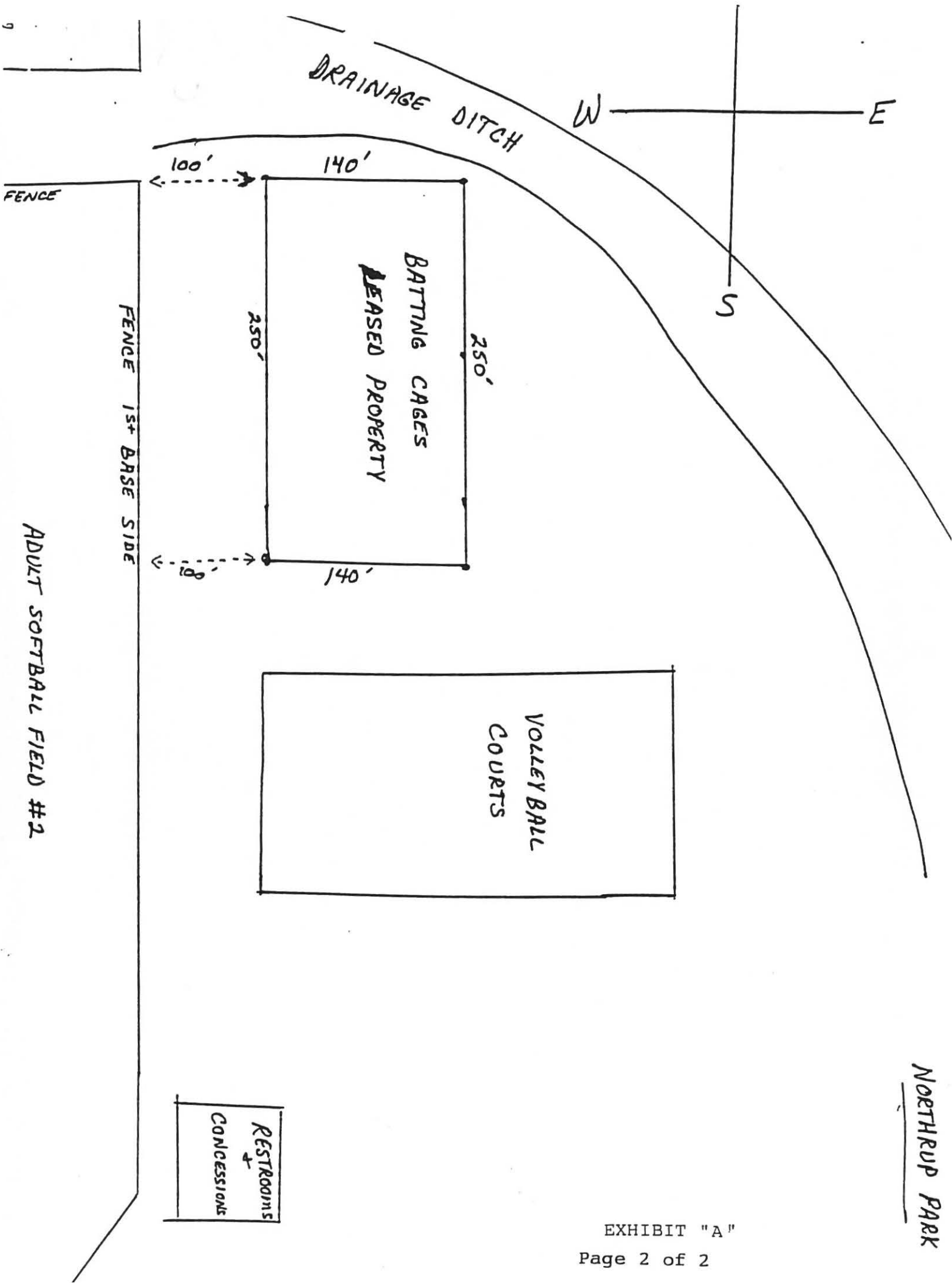


EXHIBIT B

OPERATIONAL AND MAINTENANCE AGREEMENT

THIS OPERATIONAL AND MAINTENANCE AGREEMENT is made this ____ day of _____, 2019, between the **CITY OF BOERNE**, herein called the "**Lessor**", and **AGRICULTURAL HERITAGE MUSEUM, INC.** herein called the "**Lessee**".

WHEREAS, the **Lessee** will use the premises of the Agricultural Heritage Museum solely to accomplish the mission of **Lessee**, which is to collect, preserve, and interpret historical implements and machinery to teach present and future generations about our vanishing agricultural traditions through preservation and education, and other purposes as stated in the Lease; and

WHEREAS, the **Lessor** desires to assist the **Lessee** in providing such mission; and

WHEREAS, the **Lessee** recognizes that the **Lessor** may, from time to time, need to perform certain construction projects on the premises of the Agricultural Heritage Museum for the benefit of the public; and

WHEREAS, the **Lessor** acknowledges that it will endeavor to complete these and other projects, as necessary, for the good of the public while minimizing the impact on **Lessee'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 Lessee:

- a) shall at its sole cost and expense, repair and maintain the Agricultural Heritage Museum buildings and structures, including the building housing the restroom facilities, located within the leased property (Exhibit A); existing as of the date of this agreement, or built/constructed any time thereafter by **Lessee**, with the exception of those listed in I. GENERAL TERMS, 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 designated Agricultural Heritage Museum area of management (Exhibit A) with the exception of those items listed in I. GENERAL TERMS, section 1.03 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;

- 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, etc. prior to the onset of work;
- f) shall provide **Lessor** with an annual schedule of events and activities to include those open to the general public as well as dates when the Agricultural Heritage Museum would be closed to the general public;
- g) shall be responsible for removal of garbage/solid waste of **Lessee** which exceeds the capacity of Lessee's contracted garbage collection;
- h) shall be responsible for the opening, closing, and cleaning of the restroom building prior to and after use during Agricultural Heritage Museum programs and activities, to include the provision of paper supplies as needed;
- i) shall be responsible for locking and un-locking the public access gates into the Agricultural Heritage Museum;
- j) shall provide to the Lessor the Agricultural Heritage Museum hours of operation;
- k) shall provide Lessor with a list of the 24-hour phone numbers of **Lessee's** personnel to be contacted in the event of an emergency.

1.02 The **Lessee** shall provide to the City Manager, or his designee, in writing, written request of special needs for consideration. Such requests should be submitted a minimum of fifteen (15) business days in advance of the requested date of action. The **Lessor** will consider, and possibly act upon, written request of special needs and agrees to respond to **Lessee's** request(s) within five (5) business days.

1.03 The **Lessor** agrees to the following items during the term of this Agreement:

- a) agrees to mow grass areas and trim fence lines as needed;
- b) will remove any trees or vegetation, that die, or portions thereof, that are discovered and determined by the City to be hazardous to the safety of park users;
- c) will supply and maintain the public restrooms located next to the Agricultural Heritage Museum grounds and provide trash removal, only if it is opened and utilized by the City of Boerne for public activities;

d) will repair the public restroom and replace any amenities as needed due to wear and tear or vandalism that might occur during general public use as a result of a City of Boerne sponsored event or activity;

e) will make reasonable efforts to avoid sensitive features, areas, and natural and cultural resources when performing maintenance activities or otherwise working or patrolling the site.

1.04 The **Lessee** agrees to attend special called meetings with the Parks and Recreation Director or his or her designee to discuss City Park maintenance, Agricultural Heritage Museum activities, and other subjects of common interest.

1.05 The **Lessee** agrees that **Lessor** is entitled to reasonable access to the premises in order to complete various construction projects on and around the premises, from time to time, as deemed necessary for the public good;

II. NON-DISCRIMINATION CLAUSE

The **Lessee** hereby agrees to refrain from any activity in relation to and use of the Facility that discriminates against any person or persons based upon race, color, creed, national origin, religion, sex, or communicable disease, in accordance with present federal and state laws.

III. INDEMNIFICATION

Lessee shall so conduct its activities upon the premises so as not to endanger any person lawfully thereon; and shall indemnify, save and hold harmless the **Lessor** and all of its officers, agents, and employees from any and all claims for losses, injuries, damages and liabilities to persons or property occasioned wholly or in part by the acts or omissions, including the negligence, of **Lessee**, its agents, officers, employees, guests, patrons, or any person or persons admitted to said premises while said premises are used by or under the control of **Lessee**.

IV. MISCELLANEOUS TERMS

4.01 This Agreement has been 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.

4.02 This Agreement and the rights and obligations herein may not be assigned by the **Lessee** without the prior written approval of the **Lessor**.

4.03 This Agreement may only be amended by written instrument approved and executed by both parties.

4.04 The **Lessor** shall have the right to make inspection at any reasonable time to insure compliance with this agreement.

4.05 **Lessor and Lessee** 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.

4.06 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.

4.07 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 dated _____2019, for the operation of the Agricultural Heritage Museum, and does not otherwise alter the terms of said lease. In the event of a conflict in provisions of this agreement and the Lease Agreement, the terms of the Lease Agreement shall take precedence over the terms of this agreement.

4.08 This Operational and Maintenance Agreement shall be for a term of five (5) years beginning on the 1st day of _____, 2020, and ending on the 1st day of _____, 2025. Beginning 90 days prior to the expiration of this Agreement, the City Manager, or his designee, shall enter into negotiations for renewal and/or modification of this Operation and Maintenance Agreement. If no agreement can be made, Lessee shall be responsible for operation of the Agricultural Heritage Center for the remainder of the lease term.

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:_____

Title:_____

ATTEST:

BY:_____

TITLE:_____

AGRICULTURAL HERITAGE MUSEUM

By:_____

Title:_____

ATTEST:

BY:_____

TITLE:_____