

**~~SECOND~~~~FIRST~~ AMENDED AND RESTATED LEASE OF SAN MARCOS PARK
PREMISES BETWEEN THE CITY OF SAN MARCOS AND THE SAN MARCOS LIONS
CLUB**

This ~~second~~~~First~~ Amended and Restated Lease of San Marcos Park Premises (this "Lease") is made between the City of San Marcos, Texas, a municipal corporation (the "Lessor") and San Marcos Lions Club (the "Lessee") and amends that certain Lease between Lessor and Lessee dated as of ~~April 11, 2011~~April 11, 2021, as renewed.

**Article 1. Lease of Premises; Acceptance of Existing Conditions;
Compliance with Regulations**

1.01. Leased Premises: In consideration of the obligation of the Lessee to pay rent and in consideration of the other terms, covenants and conditions of this Lease, the Lessor leases to the Lessee, and the Lessee leases from the Lessor that approximately 4720 square foot portion (indicated by shading) of the Pauline Espinosa Community Hall, formally known as the City Recreation Building, and adjacent sidewalks (indicated by dashed lines) as shown in Exhibit "A", attached hereto and made a part hereof for all purposes (the "Leased Premises") in Hays County, Texas. The Lessor agrees that the Lessee shall also have access to and shared use of the public parking lot adjacent to the leased Premises and the public restrooms in the ~~City Recreation Building~~Pauline Espinosa Community Hall, all as shown in Exhibit "A", subject to Lessor's exclusive control and management of said public facilities.

1.02. No Warranty: The Lessee acknowledges that 1) the Lessor makes no representations or warranties regarding the suitability of the Leased Premises for the Lessee's intended purposes, or the presence of environmental, geologic, or other site conditions that may affect the Lessee's use of the Leased Premises; 2) the Lessee accepts full responsibility for determining the suitability of the Leased Premises for its intended purposes; and 3) the Lessee has inspected the Leased Premises to satisfy itself as to the suitability of the Leased Premises for its intended purposes.

1.03. Compliance With Rules: In addition to other requirements in this Lease, Lessee agrees to comply with all ordinances, rules and regulations governing City Park within which the Leased Premises are located.

Article 2. Term, Rent and Contributions

2.01. Term: The ~~fourth~~~~third~~ five-year renewal of the Lease shall commence effective as of April 11, ~~2021~~2026 and shall expire on April 10, ~~2026~~2031. This Lease may be renewed for up to ~~two~~one additional terms of five years, each upon mutual agreement of Lessee and Lessor.

2.02. Rent: The Lessee agrees to pay to the Lessor a fixed rental in the sum of ~~\$11,900.00~~12,500 per year. Rent shall be paid annually by September 30 at the place designated for notices below. Unless otherwise agreed at the time of any renewal under paragraph 2.01, the annual rent during any renewal period shall be as follows:

April 11, 2026 through April 10, 2031	\$12,500.00
April 11, 2031 through April 10, 2036	\$13,150.00

2.03. Lessee shall collect on behalf of and remit to the City any fees, assessments or charges arising by virtue of or related to its activities under this Lease as may be required by any ordinance, law, order or regulation. Additionally, the City may submit an invoice or invoices to Lessee for the above mentioned or other fees, assessments or charges due and payable to the City. Such invoice or invoices must be paid by the Lessee with the next annual rent payment, except when earlier payment may be due under applicable ordinance, law, order or regulation.

2.04. Late Payment: If the Lessee fails to pay any rent or any other sum payable to the Lessor under the terms of this Lease when due, then interest at the rate of five percent per annum shall accrue from the date on which the sum became due and payable.

2.05 Renewal: Negotiations between the Lessor and Lessee for future renewal periods shall be finalized and approved by October 1 of the preceding year of the expiration date.

2.06 River Parks Improvements Donation: In addition to the annual rent identified in Section 2.02 of this Lease, the Lessee shall establish a River Parks Improvements Fund allowing customers to make donations through the Lessee's website and point-of-sale transactions with the following conditions:

- A. This donation will be guaranteed over the five (5) year term of this renewal period in the minimum amount of \$10,000 per year.
- B. This donation will be provided in the form of a Lions Club Grant to the San Marcos Parks and Recreation Department for the purposes of funding improvements within the river parks.
- C. This donation will be contingent upon the Lions Club tube rental operation being open for the entire season and not forced to close due to government mandate. Should a mandatory closure occur that exceeds seven (7) days (excluding inclement weather closures), the Lions Club will be authorized to deduct from the guaranteed amount \$100 each day that the park is closed.

2.07. Termination: Lessee shall surrender and vacate the Leased premises on the last day of the term of this Lease. Upon termination of the lease, Lessee shall also remove all personal property, equipment from the Leased premises. Lessor may retain, destroy, or dispose of any property left in the Leased Premises at the end of the Term.

Article 3. Use and Care of Premises

3.01. The use of the Leased Premises by the Lessee shall be restricted to conducting an inner tube rental operation. Lessee may sell, at Lessee's discretion, drinking water, soft drinks, prepackaged foods and snacks, t- shirts, river related merchandise, and air for inner tubes within the confines of the leased portions of the ~~City Recreation Building~~ Pauline Espinosa Community Hall and the Rio Vista concession stand authorized in 3.02. Lessee shall not sell alcoholic

beverages, Styrofoam products or plastic straws on the leased premises. Additionally the lessee shall not sell alcoholic beverages, Styrofoam products, any single-use beverages or plastic straws ~~or~~ in Rio Vista Park. Use of the Leased Premises for any purpose other than permitted by this Lease shall constitute a default.

3.02. Lessee is granted permission to place a temporary concession stand on the concrete slab located in Rio Vista Park. The concession stand may not be placed prior to May 1 of each year and must be completely removed by October 1 of each year.

3.03. In exchange for the right to sell concessions in Rio Vista Park, the Lion's Club will make an annual donation to the City Marshal/Park Ranger division care of the San Marcos Parks and Recreation Department in the amount of \$285 per day that the concession stand is open for the purposes of purchasing or replacing equipment used to perform their daily duties in the riverfront parks. The regular days of operation shall be Thursday, Friday, Saturday, Sunday, and holidays (Memorial Day, 4th of July and Labor Day). Closures due to inclement weather will not be counted as an operating day.

Operating days are expected to be as follows:

202~~61~~ Season (May1 – September 30): ~~71~~67 Days

202~~72~~ Season (May1 – September 30): ~~70~~68 Days

202~~83~~ Season (May 1 – September 30): ~~76~~69 Days

202~~94~~ Season (May 1 – September 30): ~~76~~71 Days

20~~3025~~ Season (May 1 – September 30): ~~72~~70 Days

3.04. The Lessee shall not place or keep anything on the Leased Premises or use the Leased Premises for any purpose which increases the insurance premium cost or invalidates any insurance policy carried on the Leased Premises without the Lessor's prior written consent. The Lessee agrees that the risk of loss and damage for all property kept, stored or maintained by it within the Leased Premises shall be the Lessee's.

3.05. The Lessee shall not use or permit the use of the Leased Premises in any manner that results in waste of the Leased Premises, or constitutes a nuisance, or violates any statute, ordinance, rule or regulation that applies to the Leased Premises.

3.06. The Lessee shall keep the Leased Premises, used by Lessee, neat, clean, and free from dirt and trash at all times.

3.07. The Lessor shall be responsible for cleaning and maintaining the public restrooms in the ~~City Recreation Building~~Pauline Espinosa Community Hall to be used by Lessee in connection with its authorized activities according to Lessor's usual and customary cleaning schedules and standards, as determined by Lessor in its sole discretion. Although Lessor has primary responsibility to clean and maintain restrooms, Lessee agrees to and will clean the restrooms on an as needed basis between the Lessor's regular cleanings. The Lessor shall provide trash bin liners, paper towels, and toilet paper to the Lessee, and the Lessee shall replace these

items in the public restrooms as necessary.

3.08. The Lessee shall store all equipment, materials and supplies within the confines of the Leased Premises. Outside storage is specifically prohibited without the advance written consent of the Lessor.

3.09. Failure to use the Leased Premises for any purpose other than permitted by this Lease shall constitute a default.

3.10. The Lessee shall give prompt notice to the Lessor of any accident on the Leased Premises, and of defects in the Leased Premises of which the Lessee is aware.

3.11. Lessee agrees to allow Lessor to enter the Leased Premises to perform Lessor's obligations, inspect the Leased Premises. When the Premises are not in use by Lessee, the Lessor may conduct activities in the Premises that do not interfere with the Permitted Uses with prior written consent from the Lessee.

Article 4. Maintenance and Repair of Premises

4.01. The Lessee shall keep the Leased Premises in good, clean condition and will maintain the personal property, removable fixtures, and equipment owned or controlled by Lessee in good repair and condition. The Lessee shall comply with all governmental laws, ordinances and regulations that apply to the Leased Premises, at its sole cost and expense. At the expiration of this Lease, the Lessee shall surrender the Leased Premises in good condition, reasonable wear and tear excepted.

4.02. Lessee shall submit in writing to Lessor any request for repairs, replacement, and maintenance that are the obligations of Lessor.

Article 5. Alterations and Fixtures

5.01. The Lessee shall not make any alterations, modifications, additions, or improvements, (including, but not limited to, structural, electrical, plumbing and painting) to the Leased Premises without the prior written consent of Lessor.

5.02. The Lessee shall ensure that no lien or similar obligation is imposed upon the Leased Premises for any alteration, repair, labor performed or materials furnished to the Leased Premises, and the Lessee shall immediately discharge any lien or charge after the lien occurs or charges become due and payable. ***The Lessee shall hold harmless, indemnify and defend the Lessor, its officers, agents and employees from and against any claims, demands or suits related to such liens or obligations.***

5.03. The Lessee shall not install any exterior lighting, shades or awnings, or any exterior decorations or paintings on the Leased Premises or erect, install or change any signs, window or door lettering, placards, decorations, or advertising media of any type without the prior written

approval of the Lessor.

Article 6. Utilities/Taxes

6.01. The Lessee shall promptly pay all charges for electricity, telephone service, and other utilities furnished to the Leased Premises. No such utilities shall be connected or installed until the Lessor approves the location and specifications for such connections and installations. The Lessor will provide water and wastewater utilities at no charge to Lessee.

6.02. The Lessor shall not be liable for any interruption or impairment whatsoever in utility services to the Leased Premises.

6.03. The Lessee shall pay when due all taxes and assessments, if any, against the Leased Premises or underlying real property, equipment, inventory and other personal property on the Leased Premises attributable to the activities of the Lessee under this Lease. The Lessee shall also pay when due all sales, excise, income and other taxes, if any, levied upon its business operations on the Leased Premises.

Article 7. Insurance and Indemnity

7.01. Insurance: The Lessee will purchase and maintain in full force and effect during the term of the lease insurance as provided below, proof of which will be in a form acceptable to the Lessor:

- A. Commercial general liability insurance with minimum limits of liability of not less than \$500,000 per occurrence;
- B. Business automobile/motor vehicle liability insurance with minimum limits of liability for bodily injury and property damage combined of not less than \$500,000 per occurrence shall be in full force and effect during periods of authorized business activities; and
- C. Workers compensation insurance within statutory limits, if applicable.

All of this insurance shall be primary over any other insurance coverage the Lessor may have and shall be written so that the Lessee and the Lessor will be notified in writing at least 30 calendar days in advance in the event of cancellation, restrictive amendment or non-renewal. **Commercial general liability and business automobile insurance coverage will be written with the City of San Marcos, Texas as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City of San Marcos.**

7.02. Approval Before Occupancy: The Lessee will submit certificates of insurance to the Lessor for approval prior to taking occupancy of the Premises.

7.03. Continuing Responsibility: In any event, the Lessee is fully responsible for all losses arising out of, resulting from or connected with operations under this Lease whether or not the losses are covered by insurance. The Lessor's acceptance of insurance certificates that do not

comply with these requirements will not release the Lessee from compliance with these provisions.

7.04. Indemnity and Hold Harmless:

A. The Lessee agrees to hold harmless, indemnify and defend the Lessor and its officers, agents and employees from and against all claims, suits and actions by third parties for loss of life, personal injury or property damage arising in connection with the use of the Leased Premises by the Lessee, its agents, contractors, employees, servants, invitees or licensees.

B. The Lessee shall use the Leased premises and use, occupy and store property on the Leased Premises at its own risk, and the Lessee agrees to hold harmless and release the Lessor, and its officers, agents and employees from all claims, suits and actions by the Lessee for loss of life, personal injury or property damage resulting therefrom.

C. In case the Lessor is made a party to any litigation commenced by or against the Lessee that is covered by this paragraph, then the Lessee shall hold the Lessor harmless from and pay all costs and expenses of the Lessor related to the litigation, including the fees of attorneys and expert witnesses.

Article 8. Hotel Occupancy Data

Lessee agrees to record at the point of tube rental, in a method and on a form approved by the City Manager of the Lessor: a) the number of tube renters staying in San Marcos hotels, motels, tourist homes, tourist houses, tourist courts, lodging houses, inns, rooming houses, or bed and breakfasts (collectively, "Hotels"); and b) the number of room nights such tube renters are staying in such Hotels.

Article 9. Litter Abatement

9.01 The Lessee shall assist in the cleanup of the San Marcos River in and around the area of the City recreation building during City of San Marcos designated river cleanup events.

9.02 The Lessee shall provide an employee to remove litter from the parks, riverbanks, and the City Park parking area a minimum of 2 hours each operating day Monday – Friday and 4 hours each day Saturday – Sunday.

9.03 The Lessee shall remove litter from the following city owned parks commonly known as: City Park, Dog Beach, and a defined area of Rio Vista Park. The Lessee shall remove litter from the area between the concession stand at Rio Vista Falls to Reynolds Street along Cheatham Street.

Article 10. Condemnation

10.01. Total: If the whole of the Leased Premises is taken by eminent domain, then this Lease shall terminate as of the date the title vests in the proceeding.

10.02 Partial: If a portion of the Leased Premises is taken by eminent domain, and the partial taking renders the remaining portion unsuitable for the business of the Lessee, then this Lease shall terminate. If the partial taking is not extensive enough to render the premises unsuitable for the business of the Lessee, then this Lease shall continue in effect, except that the fixed annual rental shall be reduced and adjusted in an appropriate manner.

10.03 Rent Payments: If this Lease is terminated as provided in this section, rent shall be paid up to the date that possession is taken by the condemning authority, and the Lessor shall make an equitable refund of any rent paid by the Lessee in advance.

10.04 Division of Award: The Lessor and the Lessee shall each be entitled to receive and retain separate awards, or portions of lump sum awards, as are allocated to their respective interests in the condemnation proceeding. The termination of this Lease under this Paragraph shall not affect the rights of the respective parties to such awards.

Article 11. Damage by Casualty

11.01. The Lessee shall give immediate verbal notice, and prompt written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

11.02. If the Leased Premises are damaged by casualty and can be restored within 30 days, Lessor will, at its expense, restore the Leased Premises to substantially the same condition that existed before the casualty and Lessee will, at its expense, replace any of its damaged furniture, fixtures, and personal property and restore any authorized leasehold improvements installed by Lessee. If Lessor fails or is unable to complete the portion of the restoration for which Lessor is responsible within 30 days from the date of written notification by Lessee to Lessor of the casualty, Lessee may terminate this lease by written notice delivered to Lessor before Lessor completes Lessor's restoration obligations.

11.03. To the extent the Premises are untenantable after the casualty, the Rent will be prorated for the period of time that the premises cannot be used by Lessee.

11.04. Any insurance or risk pool coverage against casualty loss which may be carried by either the Lessor or the Lessee shall be under the sole control of the party carrying the insurance or risk pool coverage, and the other party shall have no interest in any proceeds thereof. Lessor and Lessee expressly waive any cause of action or right of recovery which either of them may have against the other for any loss or damage to the Leased Premises or to the contents caused by fire, explosion, or other risk covered by the casualty insurance or risk pool coverage.

Article 12. Assignment and Subletting

Lessee may not assign this Lease or sublet the Leased Premises without prior written consent of the Lessor. Any such assignment or subletting shall constitute a default.

Article 13. Events of Default and Remedies

13.01. Default: The following events shall be events of default by the Lessee under this Lease:

A. The Lessee fails to pay when due any rental or any other sums or charges due under this Lease.

B. The Lessee fails to comply with any other term, provision, or covenant of this Lease, and does not cure the failure within 30 days after written notice to the Lessee. For any subsequent default by the Lessee for the same or any other reason, the Lessor may terminate the Lease if that subsequent default continues for more than three days after notice of the subsequent default.

C. The Lessee commences, or another party commences against the Lessee, proceedings in bankruptcy, for reorganization, or for the readjustment or arrangement of its debts under the bankruptcy laws of the United States or under any other law. The acceptance by the Lessor of the Lessee's monthly payments subsequent to the occurrence of this event of default, or that set forth in subparagraph E below, shall be as compensation for use and occupancy of the Leased Premises, and shall in no way constitute a waiver by the Lessor of its right to exercise any remedy provided for any event of default.

D. A receiver or trustee is appointed for all or substantially all of the assets of the Lessee.

E. The Lessee abandons or vacates all or any substantial portion of the Leased Premises for more than 30 consecutive days during the periods of conducting its authorized activities under paragraph 3.01.

13.02. Remedies: Upon the occurrence of any of the events of default, the Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

A. Terminate this Lease. In this event the Lessee shall immediately surrender the Leased Premises to the Lessor, and if the Lessee fails to do so, the Lessor may enter and take possession of the Leased Premises and remove the Lessee and any other person occupying the premises, without prejudice to any other remedy it may have for possession or arrearages in rent, and without being liable for any resulting damages. The Lessee agrees to pay to the Lessor the amount of all resulting costs, losses and damages incurred by the Lessor within 30 days of the Lessor's issuance of a statement to the Lessee.

B. Relet the Leased Premises to any lawfully approved tenant and receive the rent. The Lessee agrees to pay to the Lessor any resulting costs, and any deficiency that may arise by reason of reletting, within 30 days of the Lessor's issuance of a statement to the

Lessee.

C. The Lessor's pursuit of any of these remedies will not preclude pursuit of any other remedies provided under this Lease or by law, nor will pursuit of any remedy constitute a waiver of any rent due to the Lessor or of any damages caused to the Lessor by any violation of this Lease by the Lessee. Any failure by the Lessor to enforce a remedy upon an event of default shall not be deemed to constitute a waiver of the default or of the Lessor's right to insist on strict compliance with this Lease.

13.03. Attorney Fees: If it becomes necessary for the Lessor to employ an attorney to enforce or defend any of the Lessor's rights or remedies because of any breach or default by the Lessee under this Lease, the Lessee agrees to pay all reasonable attorney's fees incurred by the Lessor, within 30 days of the Lessor's issuance of a statement for the fees to the Lessee.

Article 14. Landlord's Lien

The Lessee grants to the Lessor a valid first security interest upon all of the Lessee's goods, chattels, furniture, trade fixtures, inventory and other property upon the Leased Premises to secure all rents and other sums due or to become due to the Lessor. The Lessee expressly waives all exemption laws in favor of this security interest; and it is agreed that this express security interest shall be in addition to, and not as a waiver of or substitute for any statutory or other liens of the Lessor. In connection with this security interest, it is agreed that in the event of a breach or default by the Lessee, the Lessor may exercise all rights and remedies provided to a secured party after default under the Uniform Commercial Code ("UCC"), as adopted and amended in Texas, with respect to all such property, including, without limitation, the right to take and retain possession of the property and to sell it at public or private sale, or to use it in any other manner authorized or provided in the UCC. Upon request by the Lessor, the Lessee agrees to execute and deliver UCC Financing Statements to the Lessor from time to time as the Lessor deems necessary to perfect the Lessor's security interest in the property, and proceeds thereof under the provisions of the UCC.

Article 15. Holding Over

If Lessee does not vacate the Leased Premises following termination of this Lease, Lessee will become a tenant at will and must vacate the Premises on receipt of notice from Lessor. No holding over by Lessee, whether with or without the consent of Lessor, will extend the Term. During the period of holding over the Lessee shall be liable for the payment of rent on a prorated basis equal to two times the annual rent in effect as of the last lease term before the lease termination date.

Article 15. Miscellaneous

16.01. Words and Phrases: When the singular number is used in this Lease, it will include the plural when appropriate, and the neuter gender will include the feminine and masculine genders when appropriate.

16.02. Invalidity: If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, this Lease will remain in effect, and the remaining provisions will continue in force if they can be given effect without the invalid portion.

16.03. Amendment: This Lease may be amended only by an instrument in writing signed by both parties.

16.04. Captions: The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.

16.05. Waiver: One or more waivers of any covenant, term or condition of this Lease by either party shall not be deemed as a waiver by that party as to any subsequent similar act or omission.

16.06. Force Majeure: Whenever a period of time is prescribed for action to be taken by the Lessor, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes beyond the reasonable control of the Lessor shall be excluded from the computation of any such period of time.

16.07. No Joint Venture: This Lease shall not be construed as creating the relationship of principal and agent or of partnership or of joint venture between the parties. The only relationship between the parties is only that of Lessor and Lessee.

16.08. Law and Venue: The parties agree that the laws of the State of Texas shall govern this Lease and that exclusive venue for enforcement of this Lease shall lie in Hays County, Texas.

16.09. Notice: Wherever any notice is required or permitted under this Lease, the notice shall be in writing and sent by certified mail, return receipt requested, addressed to the respective party at the following addresses. The Lessee shall provide the Lessor with advance written notice of any change in its address.

Lessor:

City of San Marcos
Attention: City Manager
630 East Hopkins Street
San Marcos, Texas 78666

Lessee:

San Marcos Lions Club
Attention: President
102 Wonder World Dr, Ste 304, Box 630
San Marcos, Texas 78666

EXECUTED to be effective as of April 11, 202~~6~~¹.

LESSOR:
CITY OF SAN MARCOS

By: Stephanie Reyes, City Manager

Attest:

Elizabeth Trevino
City Clerk

LESSEE:
San Marcos Lions Club

By: _____

Name: _____

Title: _____