

34 Filed as Ordinance: _____

35

36

37 Approved as to form: _____, City Attorney

38

39

40 Approved for Council Action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2022- 245

FILED: 09-13-22

ORIGINATING DEPARTMENT: Law

PURPOSE: To authorize the City Manager, or designee, to enter into an Amended and Restated Lease Agreement with the Greene County Agricultural and Mechanical Society of Springfield, Missouri.

BACKGROUND INFORMATION: The City currently leases property commonly known as the Fairgrounds to the Greene County Agricultural and Mechanical Society ("Fair Board"), a non-profit benevolent association that operates the Ozark Empire Fairgrounds. The Fair Board provides a wide variety of community activities and resources.

The current lease with the Fair Board was executed in 2012 and a few minor amendments have been made to the lease since then. The proposed Amended and Restated Lease Agreement ("Exhibit 1") would update and extend the lease.

Submitted by:

Approved by:

Rhonda Lewsader, City Attorney

Jason Gage, City Manager

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement (“Lease”) is made and entered into as of this ____ day of _____, 2022, (“Effective Date”) by and between the City of Springfield, Missouri (“City”), and the Greene County Agricultural and Mechanical Society of Springfield, Missouri, a not-for-profit benevolent association, of the County of Greene, State of Missouri (“Lessee”).

WITNESSETH:

WHEREAS, the City, the Springfield-Greene County Park Board, and Lessee previously entered into Contract Number 1993-406 and Amended Contract 1993-406-01 (collectively the “Original Lease”), which Original Lease was consolidated and replaced by that certain Amended and Restated Lease Agreement 1993-406-02, dated March 15, 2012, between the City and Lessee, as subsequently amended by that certain First Amendment to Amended and Restated Lease Agreement dated April 1, 2013, and that certain Addendum 1993-0406, dated July 16, 2013 (referenced in context to the Original Lease as Addendum #3) and that certain Addendum to Lease Agreement 1993-0406, dated June 21, 2018 (referenced as Addendum #04) (collectively referred to as “Prior Lease”), whereby Lessee leases a portion of the real property located on Norton Road in Springfield, Missouri, commonly known as the Fairgrounds (“Leased Premises”); and

WHEREAS, Lessee has for many years performed civic functions in an outstanding manner, providing recreational and educational activities and facilities for Greene County citizens; and

WHEREAS, it is desirable that the new Lease be entered into as hereinafter set forth so that Lessee may obtain increased revenue to remain a viable organization and the term of the Lease be extended so that Lessee (and its concessionaires, exhibitors and sub-lessees) may erect and maintain permanent improvements on the Leased Premises, make other capital improvements, and make long-range plans for the development and use of said premises and improvements consistent with this Lease and Lessee’s agricultural mission.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, City hereby leases to Lessee the Leased Premises, known as the Fairgrounds, located on Norton Road, Springfield, Missouri, on the following terms and conditions:

1. **Prior Lease Agreement.** The Prior Lease is hereby Amended and Restated in its entirety as of the Effective Date of this Lease and shall be replaced by the covenants, terms and conditions set forth herein.

2. **Leased Premises.** City hereby leases to Lessee, and Lessee leases from City, the Leased Premises described herein:

All of the West Half (W/2) of Lot Two (2) of the Northeast (NE) Fractional Quarter (1/4) of Section Two (2), Township Twenty-nine (29), Range Twenty-two (22). Also that part of the East Half (E/2) of Lot Two (2) of the Northwest (NW) Fractional Quarter (1/4) of Section Two (2), Township Twenty-nine (29), Range Twenty-two (22), lying East of the present road running in a northerly direction through Zoo Park, across the fill and lying West of race track site, containing seventy (70) acres, more or less, all of which is under fence and now being used by the Greene County Agricultural and Mechanical Society of Springfield, Missouri, as allowed under Prior Lease.

3. **Term.** The term of this Lease shall be for a period commencing on the Effective Date set-out above, and expiring at midnight on October 14, 2052, with an option to extend the Lease by mutual agreement of the parties for additional five (5) year terms, so long as all terms and conditions are expressly approved in writing by both parties. Any holding over after the expiration of this Lease, or any extended term thereof, shall not operate to renew this Lease.

4. **Rent.** As rent payments hereunder, the Lessee shall pay to the City the amounts set forth in subparagraph A. below.

A. Lessee shall pay to City an annual rental fee of Six Thousand Five Hundred Dollars (\$6,500.00), due and payable annually on October 14 for the years 2022 through 2027. Beginning with the payment due October 14, 2028, and every fifth year thereafter, the annual rental fee shall be increased in the anniversary month of this Agreement (October) by a percentage amount equal to the [net] percentage increase in the Consumer Price Index – All Items for Urban Consumer, for all cities, as published by the United States Department of Labor, Bureau of Labor Statistics (“CPI”) for the immediately preceding five-year period ending September 30. If there is no percentage increase in the CPI, the annual rent fee shall not be increased; however, in no event shall the rent be reduced.

B. All such rental payments shall be due by the 14th day of the month due or the next Business Day thereafter if the 14th day of the month is not a Business Day. “Business Day” means any day that the City is open for the conduct of business.

5. **Annual Report.** Lessee shall provide a written report to the City Manager annually by March 1 for the preceding calendar year. Said report shall describe the public events held at the Leased Premises during the prior year, including the number and estimated attendance, and whether the events were indoor or outdoor. Said report shall also provide an update on the progress of improvements set out in the Master Plan, proof of the insurance required by this Lease, and any other information required in this Lease and the Hazardous Materials disclosure described below. Such report shall also include information needed to complete an Economic Impact study every fifth year beginning with the fifth year after the execution of this Lease.

6. **Performance Indicators.** Notwithstanding any other provision in this Lease, this Lease is subject to termination at the City's sole option if: (1) total attendance at public events held at the Lease Premises is less than 500,000 per year in any two years of a three consecutive year period; or (2) there is a substantial change in management; or (3) the number of events is less than fifty per year in any two years of a three consecutive year period. In the alternative, the City may choose to modify the terms of this Lease, with input from the Lessee, instead of terminating this Lease.

7. **Periodic Review of Lease Terms.** At the request of either party, Lessee shall meet with the City Manager or his designee to review the terms of this Agreement.

8. **Maintenance.** The premises and improvements thereon are leased to Lessee in the present condition, and Lessee agrees and shall be responsible for the maintenance of all buildings and permanent improvements located on the Leased Premises. Lessee further agrees to keep the Leased Premises in as good as condition as they are in at the present time and during the term of this Lease and any extensions of this Lease, usual wear and tear or casualty/obsolete destruction or replacement excepted. Lessee further agrees to deliver to City possession of said Leased Premises at the expiration of this Lease or the extended term thereof in as good condition as at the present time, usual wear and tear and casualty/obsolete destruction excepted. Replacement must be made in accordance with the Master Plan. Lessee shall maintain the Leased Premises, including building and improvements, at all times in good order and a safe, neat, sanitary, and attractive condition, shall repaint and refurbish the Leased Premises at reasonable periodic intervals and shall not permit the accumulation of any trash, paper, or debris on the Leased Premises. Lessee agrees that it will not commit any waste on the property nor will it maintain any nuisance thereon.

9. **Ownership of Improvements.** Any buildings or permanent improvements constructed on the Leased Premises by Lessee shall become the property of the City upon the termination or expiration of this Lease.

10. **Transfers of Premises.** Lessee covenants and agrees not to (a) assign, mortgage, pledge, convey, encumber or in any manner transfer this Lease or any estate or interest therein without the prior written consent of City, or (b) sublet the Leased Premises or any part or parts thereof or allow anyone to come in with, through or under it without like consent, including without limitation any licensee (provided that such consent shall not be necessary for attendees of the Ozark Empire Fair described in Section 14 hereof). All of the transactions described in this Section 9.a. are collectively referred to as a "Transfer." Consent by City to one Transfer shall not operate as a waiver of the necessity for such consent to any subsequent Transfer. Any attempted Transfer without City's prior written consent shall be null and void and confer no rights upon any third party. Notwithstanding any such Transfer, Lessee shall remain fully liable under this Lease and shall not be relieved of any of Lessee's obligations hereunder. Notwithstanding the foregoing, a Transfer for a period of less than 90 days shall not require the consent of the City. Lessee hereby agrees that, in the event Lessee requests Lessor's consent to any Transfer, Lessee shall make such request by written notice to the City Manager, given at least thirty (30) days prior to the effective date of such proposed Transfer, specifying the name and address of the proposed transferee and the terms of such proposed Transfer.

Lessee represents that as of the date of this First Amendment there are no existing subleases or other encumbrances on the Lease or the Leased Premises.

11. **Compliance with Law.**

A. Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the Leased Premises and with all recorded covenants, conditions and restrictions, regardless of when they become effective. These include, without limitation, any requiring alteration of the Leased Premises because of Lessee's specific use, and all applicable federal, state, and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon City or Lessee with respect to the use or occupation of the Leased Premises.

B. In the furtherance of, and not in limitation of Lessee's obligations under the foregoing paragraph, throughout the term of this Lease, Lessee shall do or cause to be done all things necessary to preserve and keep in full force and effect permits required for the conduct of its business and operations from the time of commencement of this Lease until its expiration or termination.

12. **Hazardous Materials.**

A. **Definition.** As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste, including, but not limited to those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency as hazardous substances (40 CFR Part 3 02) and amendments thereto, petroleum products, or such other substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

B. **Use of Hazardous Material.** Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Leased Premises by Lessee, its agents, employees, contractors or invitees without the prior written consent of City, which shall not be unreasonably withheld as long as Lessee demonstrates to City's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Leased Premises. This section shall not apply to materials ordinarily used by Lessee in the maintenance of the premises, such as gasoline, diesel fuel, motor oil, herbicides, and cleaning products if such materials are properly stored and handled.

C. **Disclosure.** As part of the Annual Report described above, Lessee shall disclose to City the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, used, released or disposed of on the Leased Premises during the immediately preceding calendar year, or which Lessee intends to store, use, release or dispose of on the Leased Premises.

13. **Insurance and Indemnity.**

A. Lessee shall secure and maintain, at its own cost and expense, throughout the duration of this Contract, insurance [of such types and in such amounts as may be necessary to protect it, and the interests of the City of Springfield], against all hazards or risks of loss as hereunder specified, or which may arise out of the performance of this Contract. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Springfield, such approval to not be unreasonably withheld. Regardless of such approval, it shall be the responsibility of the Lessee to maintain adequate insurance coverage customary for similarly situated facilities and operations at all times during the term of the Contract. Failure of the Lessee to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under this Contract.

The certificates of insurance, including evidence of the required endorsements hereunder, or the policies, shall be filed with the City at the time that this contract is signed by the Lessee. Lessee shall also provide updated certificates of insurance annually at the time of insurance renewals. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Springfield – Attn: Risk Management Department, P.O. Box 8368, Springfield, MO 65801-8368 and

Such policies shall name the City as an additional insured with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(See <http://insurance.mo.gov/industry/sovimmunity.php>.)

As of January 1, 2022, the minimum coverage for the insurance referred to herein shall be as set out below:

i. Workers' Compensation....Statutory coverage per RSMo 287.010 et seq.
Employer's Liability..... \$1,000,000.00

ii. Commercial General Liability Insurance. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Lessee agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorneys' fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorney fees of Lessee, its employees, officers or agents. Lessee agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory. The amount of insurance shall be reviewed every two years by City, and City may require the amount to be increased. Further, Lessee agrees that when it permits a person to rent or sub-lease the demised premises herein for any purpose, that sub-lessee shall carry adequate public liability insurance protecting both Lessee and City and that the sub-lessee or tenant shall indemnify and hold harmless Lessee and City from any liability arising out of sub-lessee's or tenant's use of the property. Lessee shall require that all sub-lessees and/or tenants who rent or sublease any portion of the Leased Premises carry adequate public liability insurance and indemnity, naming City as an additional insured, and this requirement shall be incorporated into all such agreements between Lessee and any sub-lessee and/or tenant.

iii. Liquor Liability Insurance will be maintained by Lessee with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence. Any sub-contractor(s) hired by Lessee to serve alcohol must also provide Liquor Liability Insurance in the same amount, and Lessee will obtain certificates of insurance from sub-contractor. If any other users of the premises are allowed to serve alcohol, or host an event where alcohol is served, host and server shall also be required to maintain liquor liability insurance in the same amount and Lessee will obtain certificates of insurance verifying coverage.

iv. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Three Million Sixty-Five Thousand Nine Hundred Fifty-Two and no/100 Dollars (\$3,065,952.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fifty-Nine Thousand Eight Hundred Ninety-Three and no/100 Dollars (\$459,893.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

v. Property Insurance. Lessee agrees to maintain at all times during the term of the Lease a property insurance policy which covers all buildings, structures, and permanent improvements located at Leased Premises. Insurance shall include extended coverage for "Open Perils" on the ISO Special Causes of Loss Form. Such insurance shall be in an amount not less than one hundred percent (100%) of the full replacement value of such property and shall be issued by an insurance company with an A.M. Best rating of not less than an "A" rating. The amount of insurance shall be reviewed every 2 years by City, and City may require the amount to be increased. Lessee agrees to cause its insurer to name City as a named insured. Lessee is responsible for any and all property insurance deductibles, and is responsible for insuring its personal property, equipment, and contents.

B. Environmental Liability Insurance. Lessee shall obtain and maintain an insurance policy, providing coverage for occurrences and not a claims-made policy, covering the release of Hazardous Materials on or below the surface of the Leased Premises in an amount of One Million and no/100 Dollars (\$1,000,000.00). City shall be named as an additional insured on that policy.

C. Indemnity. Lessee shall protect, defend, and hold City, its officers, employees and agents completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising out of Lessee's use and occupancy of the Leased Premises, including, but not limited to, claims for personal injuries, death, property damage, wages or overtime compensation due any employees of Lessee in rendering services pursuant to this Lease, or which arise during or after the lease term as a result of contamination by Hazardous Material as a result of Lessee's or of Lessee's agents, contractors or subcontractors use or activities, , including all reasonable costs for

investigation, expert fees and defense thereof (including but not limited to attorney fees, court costs, and expert fees), and without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Leased Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees, of any nature whatsoever arising out of or incident to this agreement and/or the use or occupancy of the Leased Premises or the acts or omissions of Lessee's officers, agents, employees, contractors, subcontractors, licensees, or invitees regardless of where the injury, death or damage may occur, unless such injury, death or damage is caused by the negligence or willful misconduct of the City. This indemnification of City by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, or restoration work required by any federal, state or local government agency or political subdivision because of hazardous material present in the soil or ground water on or under the Leased Premises. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises that was caused or permitted by Lessee or its agents or contractors or subcontractors results in any contamination of the Leased Premises, Lessee shall promptly take all actions, at its sole expense, as are necessary to return the Leased Premises to the condition existing prior to the release of any such Hazardous Material upon the Leased Premises, provided that City's approval of such actions shall first be obtained (except for emergency containment and similar actions which are prudent and appropriate at the time), which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Leased Premises. The City shall give Lessee reasonable notice of any such claims or actions. The provisions of this section shall survive the expiration or early termination of this agreement.

D. **Default.** Any default under these sections of the Lease shall be a material default enabling City to exercise any of the remedies set forth in this Lease.

14. **Inspection.** City and its agents shall have the right, but not the duty, to inspect the Leased Premises at any time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, City shall have the right to immediately enter upon the Premises to remedy any violations of law or contamination caused by Lessee's failure to comply, notwithstanding any other provision of this Lease. City shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby.

15. **Liquor License.** Except during the Annual Fair, Lessee may allow alcohol to be served on the Premises as authorized by a valid liquor license. During the Annual Fair, Lessee may provide alcohol as described hereinbelow.

16. **Annual Fair.** As part of the consideration for this Lease, Lessee shall annually sponsor the OZARK EMPIRE FAIR to be held on the aforesaid premises, subject to government-imposed orders and restrictions, or due to other causes beyond the reasonable control of Lessee. The OZARK EMPIRE FAIR shall be an event that includes livestock exhibitions and competitions, life and arts exhibitions and competitions, a carnival, grandstand and other entertainment events, and food and beverage services. The OZARK EMPIRE FAIR shall be conducted on multiple consecutive days that include at least two weekends, provided that, the parties may agree in writing to fewer days should economic or other factors support doing so. Provided the Lessee has a valid liquor license allowing service in the following areas, Lessee may allow alcohol to be served at the annual Ozark Empire Fair in (i) the Grandstand Area, (ii) Bootdaddy Grill, and (iii) any and all other areas now owned and operated by the Ozark Empire Fair with permanent seating or inside an area secured by perimeter fencing, subject to the following restrictions: all areas in which alcohol is served shall have a security person and alcohol shall not be removed from the area.

17. **Use.** Lessee, or its customers, vendors, promoters, sub-lessees and tenants, shall during the term of this Lease, have the privilege of holding, conducting or sponsoring (or leasing all or part of the premises) any lawful and legitimate entertainment, exhibitions, educational or recreational activities, meetings, seminars, tradeshow, camping, private dinners, weddings, banquets, and picnics, provided the use of the Leased Property shall be consistent with a Master Plan approved by City Council and is used for the purposes herein set forth and for the primary purpose of benefitting of the general public. With respect to the allowance of alcohol on the premises, Lessee shall comply with all city and state licensing requirements as amended.

18. **Smoking Policy.** Lessee shall enforce a policy of smoking in designated areas only, and such areas shall comply with City Code requirements.

19. **Nondiscrimination.** Lessee agrees in the performance of this Agreement that neither Lessee nor its sub-lessees or tenants shall discriminate on the ground of or because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Lessee or applicant for employment or any attendee and that any admission prices charged for any event shall be fairly and uniformly imposed.

20. **Legislative Power.** During any fair exposition or exhibition by Lessee or any person, firm, or corporation subleasing from Lessee, the City shall not be deprived of the right and authority to enforce such ordinances for the protection of the public as may be enacted by the City of Springfield, Missouri.

21. **Right to Make Improvements.** Within six months of the execution of this Agreement, Lessee shall submit an updated Master Plan for the Leased Premises for the approval of City Council. Future amendments of the Master Plan must be approved by City Council. Lessee (or its concessionaires, exhibitors, tenants or sub-lessees) may repair and replace structures existing at the execution of this Agreement without amending its Master Plan if the improvements do not exceed 5,000 square feet and the project costs will not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) in any one year, provided that plans for such repair and/or replacement are reviewed by a designee of the City Manager and approved as being in compliance with the Master Plan prior to the initiation of any work. However, prior to constructing any new structures or making any improvements to or on the Leased Premises in excess of 5,000 square feet or in excess Two Hundred Fifty Thousand Dollars (\$250,000.00) in any one year (“substantial alteration”), that were not previously included in Lessee’s approved Master Plan, Lessee must submit all such plans for approval by City Council and the Planning and Zoning Commission.

22. **Lawful Purpose.** The premises and grounds above described shall be used for the aforesaid lawful and civic purposes only, and neither Lessee nor any person, firm or corporation subleasing from Lessee shall engage in or permit any activity in violation of Federal or State law or ordinance of the City of Springfield, Missouri. Lessee shall observe and comply with any and all requirements of the constituted public authorities and with all federal, state, or local statutes, and ordinances applicable to Lessee for its use of the Leased Premises.

23. **Disposition of insurance proceeds.** Any insurance proceeds received because of casualty loss as aforesaid shall be used to repair or replace the existing facility or facilities which were damaged or destroyed with a similar or other capital improvement, and in the event of the failure of Lessee to use the proceeds as aforesaid, the proceeds shall be paid to the City. It is understood and agreed that in the event of a casualty loss as aforesaid and in the further event that the insurance proceeds are insufficient to rebuild the destroyed facility, the City shall not be obligated for the difference in the amount of the insurance proceeds and the cost of replacing the destroyed or damaged facility with a similar or other capital improvement.

24. **Maintenance of roads, fences, and parking lots.** Lessee will maintain and/or construct all fences surrounding the Leased Premises, and, further, Lessee shall maintain all roads and parking lots inside the Leased Premises.

25. **Utilities.** Separate water, gas, and electric meters are to be maintained on the demised premises to determine the amount of water, gas, and electricity used by Lessee or its sub-lessees or its tenants, and Lessee shall be responsible for the payment of said charges.

26. **Special assessments.** In the event special assessments for street or other public improvements are made during the period of this Lease against the property above described, the said assessment shall be paid

by the Lessee herein. The failure to pay the obligations incurred by special assessment and payable during the term of this Lease shall work a forfeiture of the Lease at the option of the City. The City shall give thirty (30) days' notice in writing to Lessee to pay said assessment prior to forfeiture.

27. **Storage.** Lessee shall provide ten thousand (10,000) square feet of storage space, as selected by Lessee, to the Park Board to be used between October 15 through April 1 each year for the term of this Lease or its extended term. Park Board agrees, however, to maintain its own insurance on the stored property and further agrees to reimburse Lessee to the extent, if any, of any increase in the Fair Board's insurance by virtue of the storage of said Park Board and/or City property. Further, the Park Board agrees that said space is accepted as is and that Lessee shall not be responsible for the care or safe keeping of said stored Park Board and/or City property. The Park Board shall allow Lessee to store equipment on zoo property in the field north of the zoo administration/education building, the specific area to be selected or designated by the Park Board, during the term of this Lease or its extended term, unless and until the Park Board or the Zoo determines that it needs this property or otherwise determines that the property should no longer be stored at this location and provides Lessee with at least ninety (90) days notice of the unavailability of this storage area thereafter.

28. **Breach.** If any covenant or clause in this Lease is violated and not corrected within thirty (30) days after attention shall have been called thereto, in writing, by the City or the Park Board, Lessee shall immediately surrender said premises to the City, and the balance of the term of the Lease shall be cancelled upon demand by the City.

29. **Title.** The City covenants and agrees that it has good title to the demised premises and good right to make this Lease.

30. **Additional parking for zoo and Park Board.** Unless otherwise agreed to by the parties in writing, the Park Board and the zoo ("Park Board" hereinafter) shall be allowed use of the entire west parking area of the fairground's property for additional parking, except during the Ozark Empire Fair or for a property-wide event where the west parking area is needed to support such event and Lessee is unable to include Park Board's access to this parking area as a condition of this property-wide usage. Lessee shall notify Park Board at least two weeks in advance of a property-wide event that may cause the west parking lot to be unavailable for Park Board's use. The west parking area includes from the west fence line to the fence separating this area from the midway area, and from Norton road all the way to the north boundary of the fairground's property, and includes the grassy area and the large, paved area adjacent to the grandstand and E plex facilities. The Park Board shall maintain the grassy parking area in a grassy state. The Park Board and Lessee shall equally share the cost of initially constructing and erecting a chain link fence around the west parking area described herein. Lessee shall be responsible for maintenance thereafter. The provision pertaining to indemnity by Lessee to the

City and/or Park Board shall not apply to the west parking area when the Park Board is using this area for its own or Zoo parking.

31. **Police and Fire Services.** The obligation, duties and responsibilities of the Police and Fire departments, respectively, as set out herein, are independent from each other. So long as the Police and Fire Departments for the City of Springfield, Missouri (“Police Department” and “Fire Department”, respectively), have available resources, each will furnish their respective protection on the leased premises during the OZARK EMPIRE FAIR during the term of this lease at no cost to Lessee, provided, however, if either the Police and/or Fire Department determines, in their respective discretion, that they do not have sufficient resources available at the time of the Ozark Empire Fair, either or both may determine that it is not in the public interest to provide such services on site and shall have no obligation to provide such services. If the Police and/or Fire Departments have determined that they will not provide their respective protection during the Fair, and Lessee determines it would still like to contract for either or both Police and/or Fire services, as applicable, then these services may be provided by the Police and/or Fire Department, as applicable, at the expense of Lessee, based upon the City Council approved rates, with Lessee paying the Police and/or Fire Department within sixty (60) days of receipt of an invoice from the Police and/or Fire Department. If either the Police and/or Fire Department are unwilling or unable to provide the requested services, then Lessee shall be free to contract with other vendors as it sees fit. If Lessee contracts with a vendor aside from the Fire Department for Fire services, then at the time of executing the contract Lessee shall notify the Springfield Fire Chief and provide the name of the vendor. If a fire occurs while a vendor is providing services, the Fire Department shall immediately be requested by calling 9-1-1 for the appropriate emergency response. For any events that require a permit, and the permit requires dedicated police and/or fire protection, it shall be provided by the Springfield Police Department and/or the Springfield Fire Department, as applicable, at the expense of Lessee, based upon the City Council approved rates, with Lessee paying the Police and/or Fire Department within sixty (60) days of receipt of an invoice from the Police and/or Fire Department.

32. **Taxes and Assessments.** Lessee shall pay any taxes resulting from the operation of Lessee’s activities.

33. **Condition of Property at Termination.** At the end of the lease term, or at any time the Lease is terminated, Lessee immediately shall deliver to the City complete possession of the Leased Premises in as good repair and condition as they are at the time Lessee takes possession, ordinary wear and tear excepted. All repairs, alterations, additions, improvements, installations, equipment and fixtures, by whomsoever installed or erected (except such business trade fixtures belonging to Lessee as can be removed without damage to or leaving incomplete the premises or the building) shall belong to the City and remain on and be surrendered with the Leased Premises

as a part thereof at the termination of this Lease. Lessee shall repair any damage caused by removal of its property.

34. **Naming rights.** Lessee shall have the exclusive right to name buildings and projects on the Leased Premises, provided that such rights shall not exceed the term of this Lease and that names are subject to approval by City Council, which shall not be unreasonably withheld. Names must be family friendly.

35. **Waiver.** Waiver by the City of any default, breach, or failure of Lessee under this Lease shall not be construed as a waiver of any subsequent or different default, breach, or failure. In the case of a breach by Lessee of any of the covenants or undertakings of Lessee, the City nevertheless may accept from Lessee any payment or payments hereunder without in any way waiving the City's right to exercise the right of reentry provided for herein by reason of any other breach or lapse which was in existence at the time such payment or payments were accepted by the City.

36. **Lessee.** If Lessee shall merge or consolidate with another corporation, then this Lease shall automatically terminate, unless the City approves the change in writing.

37. **Conflict of Interest.** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Applicable federal regulations and provisions of RSMo Section 105 shall not be violated.

38. **Partial Invalidity.** If any term, covenant, or condition of this Lease or the application thereof to any person or event shall to any extent be invalid and unenforceable, the remainder of this Lease in the application of such term, covenant, or condition to persons or events other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

39. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

40. **Jurisdiction.** This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be adjudicated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

Executed this _____ day of _____, 2022.

IN WITNESS WHEREOF, the City and Lessee have caused this Lease to be executed by their proper officers, duly authorized by their respective Boards or other authorized group or entity and attested by a properly identified employee for each, in triplicate, the day and year first written above.

**GREENE COUNTY AGRICULTURAL
AND MECHANICAL SOCIETY OF
SPRINGFIELD, MISSOURI**

CITY OF SPRINGFIELD, MISSOURI

By: _____
President

By: _____
City Manager or designee

Attest:

Name & Title

Approved as to Form: _____, City Attorney or designee