

MARGIE R IBARRA
COUNTY CLERK
FILED

2024 FEB 21 AM 11:11

WEBB COUNTY, TEXAS

BY MW DEPUTY

State of Texas §
County of Webb §

NOTICE OF EXERCISE OF OPTION
MANAGEMENT AGREEMENT
Webb County - Webb County Heritage Foundation, Inc.

Pursuant to Article II, Section 2.2 of the Facility Management Agreement (attached hereto as Exhibit A and incorporated herein as if set out in full for all intents and purposes), Webb County does hereby give notice that the Webb County Commissioners Court did, on February 16, 2024, vote unanimously to and does hereby exercise its option to renew this Facility Management Agreement for the First 5 Year Renewal Term which will begin on March 1, 2024 through February 28, 2029.

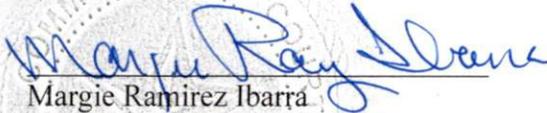
WEBB COUNTY



Tano E. Tijerina
Webb County Judge

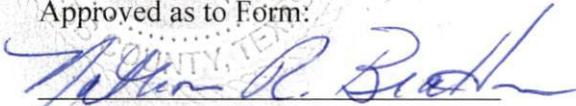
Date: 2/16/2024

ATTEST:



Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:



Nathan R. Bratton
General Counsel
Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

MANAGEMENT AGREEMENT
Webb County – Webb County Heritage Foundation, Inc.

THIS FACILITY MANAGEMENT AGREEMENT (“Agreement”) is made and entered into by and between **WEBB COUNTY, a political subdivision of the State of Texas (“Owner”)** and the **Webb County Heritage Foundation, Inc. (“Manager”)**.

ARTICLE I.
DEFINITIONS

1.1 **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Agreement: The “Agreement” shall mean this Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented or restated from time to time.

Management Fee: The term “Management Fee” shall have the meaning ascribed to such term in **Exhibit “B”** to this Agreement.

Effective Date: “Effective Date” shall October 1, 2023.

Facility: The “Facility” shall mean the property and building located at 810 Zaragoza Street, Laredo, Texas 78040 (Lots 7 & 8 Blk 11, WD City of Laredo).

General Manager: Person engaged by Manager who serves as Manager’s senior employee.

Laws: Means all applicable laws, statutes, rules, regulations and ordinances.

Manager: The term “Manager” shall mean the Webb County Heritage Foundation, Inc.

Owner: The term “Owner” shall mean Webb County, a political subdivision of the State of Texas.

Term: The term “Term” shall have the meaning ascribed to such term in Section 2.2 of this Agreement.

Termination Date: The term “Termination Date” shall have the meaning ascribed to such term in Section 2.3 of this Agreement.

FILED 12/13/20 2:30:30pm
MARGIE RAMIREZ IBARRA
COUNTY CLERK, WEBB COUNTY, TEXAS
BY Michelle Garcia DEPUTY

**ARTICLE II.
APPOINTMENT; TERM; TERMINATION**

- 2.1 **Appointment.** Owner hereby retains, engages and appoints Manager as Owner's agent to act as the manager and of the Facility and to perform the Management Services during the Term, as more fully described herein, and Manager hereby accepts said appointment upon and subject to the terms hereof.
- 2.2 **Term.** This Agreement shall commence on the Effective Date of this Agreement being October 1, 2023 and through February 29, 2023 ("**Term**") unless earlier terminated pursuant to this Agreement. Owner shall have the right to extend this agreement for two additional five-year terms.
- 2.3 **Default.** Failure of Manager to comply with any term, condition, or covenant of this Agreement shall constitute an event of Default by Manager.
- 2.4 **Termination for Cause.** This Agreement may be terminated by either party upon sixty (60) days written notice if the other party fails to perform (Defaults) in accordance with this Agreement or, in the case of Manager, if Owner fails to meet any of its material obligations under this Agreement, and such failure is not cured within a thirty (30) days (Notification Period) after receipt of written notification of the Default, or if not curable during such time, reasonable efforts are being made and maintained to cure such default at the earliest practical time.
- 2.5 **Termination for Owner's Convenience.** The Owner, by written notice, may terminate this Agreement at any time when, in its sole discretion, it determines that it in the best interests of Owner.
- 2.6 **Effect of Termination.** If this Agreement is terminated, Owner shall be liable only for goods or services delivered and accepted. Upon termination or expiration of this Agreement for any reason, (i) Manager shall vacate the property and promptly discontinue the performance of all services rendered hereunder related to the Facility; (ii) Owner shall promptly pay Manager all management fees due Manager up to the date of termination or expiration; (iii) Manager shall make available to Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder.

**ARTICLE III
OWNERSHIP; MANAGEMENT SERVICES**

- 3.1 **Ownership of Facility.** Owner shall at all times retain ownership of the Facility, including but not limited to real estate, fixtures and similar property, including improvements made during the Term, at the Facility.
- 3.2 **Management of the Facility. General.** Owner hereby delegates to Manager, subject to

the terms and conditions set forth in this Agreement, the discretion and authority to determine and implement certain programs and regulations affecting the Facility or the operation thereof.

- 3.3 **Relationship.** The parties agree that in no event is the relationship established herein one of landlord and tenant, or licensor and licensee, and Manager has no right to operate the Facility other than for the purposes set forth in this Agreement.

ARTICLE IV COMPENSATION; FINANCIAL REQUIREMENTS

- 4.1 **Compensation Payments.** Owner shall pay to Manager, as compensation for the Management Services rendered hereunder Twelve Thousand Five Hundred Dollars (\$12,500.00) monthly.
- 4.2 **Operating Account.** Except as otherwise agreed to by the parties in writing, all Revenue derived from operation of the Facility shall be deposited in Manager's accounts.
- 4.3 **Source of Funding.** Manager shall pay all items of expense for the supervision and management of the Facility.

ARTICLE V PERSONNEL

- 5.1 All Facility staff and other personnel, including those hired on a part-time and seasonal basis, shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager, and not of Owner. Manager shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees; provided, however, Owner shall have the right to disapprove the hiring of any employee for good reason, as determined in the sole discretion of the Owner, with notice of the same provided to Manager. Manager agrees to use its reasonable and prudent judgment in the selection and supervision of such personnel. During the Term of this Agreement or any extension thereof, Owner shall have no right to supervise or direct such employees, agents or independent contractors.
- 5.2 **General Manager.** Personnel engaged by Manager will include an individual who will serve as Manager's senior employee at the Facility.

ARTICLE VI RESPONSIBILITIES OF PARTIES

- 6.1 **General Responsibilities of Manager.** On or before June 15 of each year Manager shall submit to Owner a Budget ("Fiscal Year Budget") for the next fiscal year for the ongoing operation of the Project. The Fiscal Year is defined herein as October 1 to

September 30 of each year. Each such Fiscal Year Budget shall include all costs to operate, and maintain the Facility, the amount of any contemplated shortfall in the funding to cover such costs, and a pro forma budget of the anticipated ensuing year's cost of operation.

- 6.2 Manager is hereby charged with the sole and exclusive Management Services of the Facility. It is expressly understood and agreed that so long as this Agreement is in force and effect, Owner shall not interfere with and shall at no time give or communicate orders or instructions to employees or personnel employed about the Facility.
- 6.3 Manager shall maintain, operate, and staff the museum.
- 6.4 Manager shall have the sole right to plan and exhibit museum displays, historical displays, art, and any other exhibits of interest to the public or tourists which deal with Webb County history and border history.
- 6.5 Manager shall make available, at no additional cost to Owner, parking spaces adjacent to the Facility (being Lot 6, Blk. 11 WD City of Laredo – 802 Zaragoza St.) for all of Manager's employees and for visitors and patrons of the Facility.
- 6.6 Owner's liability for the costs associated with the staffing of the museum shall be limited to the funds generated and retained by Manager and any shortfall shall be the sole responsibility of the Manager.
- 6.7 Revenue generated by the museum shall be used exclusively to pay for the staffing of the museum and shall be retained by the Manager. Manager will provide a detailed accounting of the revenue and its use to the Webb County Auditor quarterly ("Quarterly Report") in a format acceptable to the Auditor. The Quarterly Report shall contain a listing of the number of patrons visiting the Facility for the quarter including any special events and a listing and brief explanation of each special event held at the Facility during the quarter.
- 6.8 Manager expressly agrees to maintain complete and accurate financial records of each expenditure made and, as requested by the Owner, the County Auditor, or his designee, shall make the records available to the Owner, County Auditor or their designees, for inspection and review. Additionally, Manager shall permit representatives of the Owner, including but not limited to the County Auditor and independent auditor, access to the names, addresses, services rendered, and all other required documents related to the Manager's performance under this contract. All such required records shall be clearly identified and readily accessible to the Owner for three (3) years after final payment under this contract, or after termination of this contract whichever is later.
- 6.9 Manager shall appear and report to the Owner (Webb County Commissioners Court) when requested by Owner.
- 6.10 Manager is a 501(c)(3) and shall file a true and correct copy of its corporate charter, with

amendments, if any, and an accurate and complete copy of its bylaws and any amendments thereto, and copy of its I.R.S. letter of determination of I.R.S. Sec. 501(c)(3) status with the Owner and, as material to its performance shall at all times comply with its Charter and By-Laws. In the event of subsequent amendments to such charter and bylaws, true and correct copies of the same shall be timely filed submitted to Owner.

6.11 **Responsibilities of Manager and Owner.**

- (a) **Insurance.** Owner and Manager shall be responsible for obtaining and administering insurance in connection with the Facility as follows:
- i. **General Liability - Owner.** Owner shall maintain at its sole expense a general liability policy which insures Owner, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$2,000,000. All such insurance shall be on an occurrence basis.
 - ii. **General Liability - Manager.** Manager shall procure and maintain, at its own expense, a general liability policy (including contractual and Errors and Omissions liability insurance) which insures Manager as the named insured and where the Owner is listed as an additional insured, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence basis.
 - iii. **Workers Compensation.** Manager shall procure and maintain all workers compensation insurance required under applicable Texas state law.
 - iv. **Property Insurance.** Owner shall procure and maintain fire and extended coverage casualty insurance, and (if appropriate) flood insurance, regarding the Facility in amounts and with companies acceptable to Owner in its sole discretion.
 - v. **Certificates of Insurance.** Owner and Manager shall upon execution of this Agreement furnish to the other party certificates of all of the foregoing insurance as well as certificates of renewal no later than thirty (30) days prior to the expiration of each policy. No cancellation or non-renewal may take effect without thirty (30) days' prior written notice by registered mail to Owner.
 - vi. **Taxes and Assessments.** Owner shall be responsible for, and promptly pay, all real estate and personal property taxes, improvement assessments, where required, and other like charges related to the Facility and the property on which the Facility is located.
 - vii. **Compliance with Legal Requirements.** Owner and Manager shall take such actions as may be necessary to comply with any and all laws, orders,

or requirements affecting Owner or the Facility by any federal, state, county or municipal agency, or authorities having jurisdiction thereover.

viii. Use and Maintenance of Property. Manager agrees not to knowingly permit the use of the Facility for any purpose which might void any policy of insurance relating to the Facility, or which might render any loss thereunder uncollectible, or which would be in violation of any government restriction. Owner, at Owner's sole expense, hereby covenants and agrees to keep the Facility in good condition and repair. Manager agrees to make regular inspections of the Facility and notify Owner of necessary repairs and maintenance.

(b) Owner shall provide for public liability insurance and property insurance on the Project and shall name Manager as an additional insured. Owner shall pay for all utilities, maintenance, and upkeep associated with the project.

ARTICLE VII

7.1 Public Access and Admission Fees. It is expressly understood and agreed by and between the parties that the building and all exhibits shall be kept open and accessible to the public, at all reasonable hours as shall be agreed upon from time to time by the Manager and Owner. The Manager shall have the authority and privilege to charge either a general admission fee or an admission fee for special exhibits or special events, provided that the Manager shall first request written approval from the Owner at least 30 days prior to the commencement of each special exhibit or special event. Further the Owner reserves the right to approve any subcontracts for concession services in the Facility including the sale or dispensing of alcoholic beverages by a sub-contractor or Manger.

7.2 Printed Materials. The Manager shall credit the Owner (Webb County) for its support of the Facility in all publicly disseminated printed materials which provide for such credits.

ARTICLE VIII COVENANTS AND REPRESENTATIONS

8.1 Owner's Covenants and Representations. Owner makes the following covenants and representations to Manager, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Owner's Status. Owner is a political subdivision of the State of Texas organized pursuant to the laws of the State of Texas, and authorized to transact business in the State of Texas, with full power and authority to enter into this Agreement.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by requisite action,

and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms and applicable Laws.

- (c) Effect of Agreement. To Owner's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder: (i) will constitute a violation of any law, ruling, regulation, or order to which Owner is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (A) to which Owner is a party or is otherwise bound, or (B) to which the Facility or any part thereof is subject.
- (d) Ownership Rights. Owner shall obtain and retain the property interests in the Facility necessary to enable Manager to perform its duties pursuant to this Agreement peaceably and quietly. Owner represents and warrants that Manager's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.
- (e) Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Facility.

8.2 **Manager's Covenants and Representations.** Manager makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

- (a) Corporate Status. Manager is a non-profit 501(c)(3) corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and authorized to transact business throughout the United States, including within the State of Texas with full corporate power to enter into this Agreement and execute all documents required hereunder.
- (b) Authorization. The making, execution, delivery, and performance of this Agreement by Manager has been duly authorized and approved by all requisite action of the board of directors of Manager, and this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms and applicable Laws.
- (c) Effect of Agreement. To Manager's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance

required under any other agreement or document to which Manager is a party or is otherwise bound.

- (d) **Documentation.** If necessary to carry out the intent of this Agreement, Manager agrees to execute and provide to Owner, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Owner may reasonably request in connection with the operation of the Facility.

ARTICLE IX GENERAL PROVISIONS

- 9.1 **Relationship.** Manager and Owner shall not be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Manager understands and agrees that the relationship to Owner is that of independent contractor, and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage or operate property, or to conduct business activities, which are competitive with the business of the Facility. Manager covenants and agrees that even though it may have a management responsibility for other similar properties, which from time-to-time may be competitive with the Facility, Manager shall always represent the Facility fairly and deal with Owner on an equitable basis.
- 9.2 **Representations.** Owner represents and warrants: (i) that Owner has full power and authority to enter this Agreement; (ii) that to the best of Owner's knowledge, the property on which the Facility is located is zoned for the intended use; (iii) that all permits for the operation of the Facility have or will be secured and are or will be current; (iv) that the Facility and its operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances); and (v) that no unsafe condition exists.
- 9.3 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.
- 9.4 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, successors, and assigns.
- 9.5 **Building Compliance.** Manager does not assume and is given no responsibility for compliance of the Facility or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Owner promptly, or forward to Owner promptly, any complaints, warnings, notices, or summonses received by Manager relating to such matters. Owner represents that to the best of Owner's knowledge, the Facility and all such equipment contained therein comply

with all such requirements.

- 9.6 **Notices.** All notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Owner: Webb County Judge
 1000 Houston St.
 Third Floor
 Laredo, Texas 78040

Copy to: Webb County Commissioners Court
 1000 Houston St.
 Third Floor
 Laredo, Texas 78040

If to Manager Webb County Heritage Foundation, Inc.
 Chairman of the Board
 500 Flores Ave.
 Laredo, TX 78040

- 9.7 **Headings.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.
- 9.8 **Force Majeure.** Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager and any time periods required for performance shall be extended accordingly.
- 9.9 **Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Facility and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Owner and Manager relating to the Facility covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Manager in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set

forth herein.

- 9.10 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.
- 9.11 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Texas. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the State District Courts of Webb County, Texas.
- 9.12 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they has been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.
- 9.13 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.
- 9.14 **No rights created.** Any other provision of this Agreement to the contrary notwithstanding, this Agreement shall not create any rights or benefits on behalf of any other person not a party to this Agreement, and this Agreement shall be effective only as between the parties hereto, their successors and permitted assigns.
- 9.15 **Inconsistencies.** Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.
- 9.16 **Terminology and Definitions.** All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.
- 9.17 **Rule of Construction.** The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against

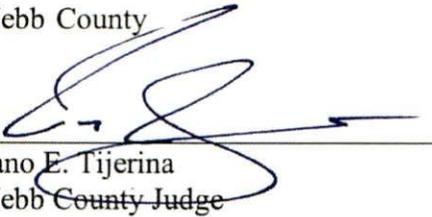
the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.

- 9.18 **Immunity.** Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.
- 9.19 **Effective Date.** This agreement is effective as of October 1, 2023, even if any signatures are made after that date.

[SIGNATURE PAGE FOLLOWS]

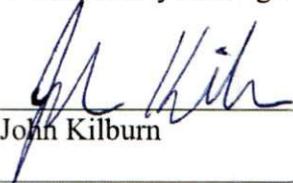
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Owner
Webb County



Tano E. Tijerina
Webb County Judge

Manager
Webb County Heritage Foundation, Inc.



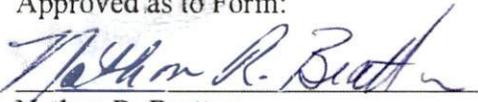
John Kilburn
Chairman of the Board
12/17/2023

ATTEST:



Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:



Nathan R. Bratton
General Counsel
Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).