



EQUIPMENT LEASE AGREEMENT

This **EQUIPMENT LEASE AGREEMENT** (“Lease”) is made to be effective as of October 14, 2020 (the “Effective Date”), by and between The EDWARDS AQUIFER AUTHORITY (the “Lessor”), a political subdivision of the State of Texas, with its principal place of business located at 900 E. Quincy, San Antonio, Texas 78215 and The SAN ANTONIO ZOOLOGICAL SOCIETY, INC. (the “Lessee”), a 501(c)(3) non-profit organization with its principal offices located at 3903 North St. Mary's Street, San Antonio, Texas 78212.

PREAMBLE

WHEREAS, the Lessor and Lessee have entered into that certain Memorandum Of Understanding dated September 13, 2017 (“MOU”) with regard to the development of an Edwards Aquifer conservation and education exhibit/program within the San Antonio Zoo through a shared and collaborative approach of the parties which will raise understanding and appreciation for the Aquifer and the federally listed endangered and threatened species associated therewith; and

WHEREAS, the Lessor and SWCA, Inc., have also entered into that certain Contract No. 15-754-HCP effective June 10, 2015 (“Refugia Contract”) whereby the Lessee as a subcontractor has agreed to perform services related to a salvage refugia operation on behalf of the Lessor, and pursuant to which the Lessor has provided certain items of equipment and other personal property to be used by Lessee in the performance of the Refugia Contract (as more completely defined herein, the “Equipment”); and

WHEREAS, the MOU calls for the parties to endeavor to negotiate, approve, and execute a lease agreement for the Equipment with regard to the continued operation, maintenance and ultimate decommissioning of the salvage refugia services and the development and commencement of the Edwards Aquifer exhibit/program which will utilize the Equipment; and

WHEREAS, the Lessor and Lessee desire to enter into this Lease in furtherance of their duties and obligations as set out in the Refugia Contract and the MOU, and it is found to be in the public interest to do so.

AGREEMENT

Therefore, the Lessor and Lessee agree as follows:

1. DESCRIPTION OF LEASED PROPERTY. The property to be leased (the “Leased Property”) is the Equipment, generally consisting of and described as three self-contained, portable research facilities, a generator, as well as associated support equipment and other items provided

by Lessor in connection therewith, as more particularly described in the attached Exhibit A - *Schedule Of Leased Property* made and incorporated as a part of this Lease.

2. LEASE TERM. The term of this Lease has been determined based upon the estimated useful life of the Leased Property as agreed by the Lessor and Lessee. The Lease Term shall commence on the Effective Date (the "Lease Commencement Date") and end on the date which is the earlier of (the "Lease Termination Date"): (a) the date the Leased Property is purchased by Lessee pursuant to Section 27(b) of this Lease, or (b) the date that is ten (10) years from the Lease Commencement Date.

3. EFFECT OF HOLDING OVER. Except as otherwise provided in Section 27(b), in the event Lessee retains possession of the Leased Property after the Lease Termination Date without the formal renewal or extension of this Lease, such retention of the Leased Property is to be deemed to constitute a further Lease of the Leased Property subject to the continuing provisions and conditions of this Lease.

4. RENTAL PAYMENTS. Throughout the term of this Lease, as rental for the Leased Property, the Lessee agrees to provide, at its own cost and expense: (a) for the installation and maintenance of three (3) signs, to be set in the locations identified on Exhibit B – *Location of Signage* made and incorporated as a part of this Lease, which signage (i) will coordinate with Lessee's signage scheme, (ii) provide messaging developed by Lessor and Lessee to promote Lessor and its mission, and (iii) highlight the importance of the activities and accomplishments of Lessor; (b) Lessee will provide up to four (4) opportunities per annum at mutually agreeable times for Lessor to provide education programing and/or a physical presence in the form of exhibits, demonstrations, or presentation as part of Lessee's Center for Conservation or other mutually agreed upon location(s) within Lessee's premises for educating the public on the merits of conservation, and preservation, and enhancement of the Edwards Aquifer and certain Covered Species (as defined and specified in the Refugia Contract) as significant natural resources; (c) as Lessee develops its master plan for exhibits, Lessor and Lessee will seek opportunities to develop a permanent on-site exhibit space which incorporates into such space exhibit and demonstration space which addresses the unique aspects of the Edwards Aquifer and the work and mission of the Lessor; (d) for the Lessee's consultation with the Lessor on the development and installation of the exhibit and demonstration space, and associated programming; and (e) Lessee's private event space and facilities, which Lessor and/or the Edwards Aquifer Conservancy may use for private events (scheduled in advance at mutually agreeable times) without a facilities use charge, for up to four (4) events per annum during the term of this Lease.

5. RIGHTS OF LESSEE TO USE OF LEASED PROPERTY. Lessee shall be entitled to the right to the use, operation, possession, and control of the Leased Property during the Lease term in accordance with this Lease, provided Lessee is not in default of any provision of the Lease. Lessee shall employ and have absolute control, supervision, and responsibility over any operators or users of the Leased Property, subject to the restrictions set forth elsewhere herein.

6. DUTIES OF LESSEE AS TO USE OF LEASED PROPERTY. Lessee must use the Leased Property in a careful and proper manner, and agrees not to permit any Leased Property to be operated or used in violation of any applicable federal, state, or local statute, law, ordinance, rule or regulation relating to the possession, use, or maintenance of the Leased Property. Lessee agrees

that the Leased Property will be used in accordance with any applicable vendors or manufacturer's manuals or instructions supplied by Lessor to Lessee, by competent and fully qualified personnel only. Lessee agrees to reimburse Lessor in full for all damage to the Leased Property arising from any misuse or negligent act by Lessee, its employees, its contractors, and its agents. Lessee will indemnify and hold Lessor harmless from all liabilities, fines, forfeitures or penalties for violation of any statute, law, ordinance, rule or regulation of any duly constituted public authority.

7. LOCATION OF LEASED PROPERTY. The Leased Property shall be located and operated at the San Antonio Zoo, 3903 N. St. Mary's Street, San Antonio, Texas, at the location agreed to by the parties. The Lessee shall have the right to move or relocate the Leased Property, from time to time, within the premises of the Zoo, after prior consultation with the Lessor, but shall be obligated to give the Lessor continuing written notice of the exact location of the Leased Property. Any location to which the Leased Property is moved must be suitable to optimize the opportunity to educate the public on the merits of conservation, ~~and~~ preservation, and enhancement of the Edwards Aquifer and the Covered Species associated therewith.

8. MAINTENANCE AND REPAIRS. Lessee shall assume all obligation and liability concerning possession of the Leased Property, and for its use, operation, condition, and storage during the Lease term, including the initial decommissioning of the refugia facilities as described in the Contract. Lessee shall, at Lessee's own cost and expense, maintain the Leased Property in good mechanical condition and running order, excepting reasonable wear and tear resulting from the ordinary use of the Leased Property, and in a manner safe for the public. Lessee shall at its own cost and expense provide all parts, mechanisms, and devices required to keep the Leased Property in good repair, condition and running order. Lessor shall not be under any liability or obligation in any manner to provide service, maintenance, repairs, or parts for the Leased Property. Without the prior written consent of Lessor, Lessee shall not make any material alterations, additions, or improvements to the Leased Property, other than those required to keep the Leased Property in good condition and running order.

9. ACCESSION. Any installation, addition, replacement, and substitution of parts or accessories with respect to any item of Leased Property shall constitute an accession, and such parts and accessories shall become part of the Leased Property owned by Lessor and subject to the terms of this Lease.

10. OPERATING EXPENSES. Lessee agrees to pay for all costs and expenses of operating the Leased Property and in performing its duties and tasks as set forth herein, and all other charges in connection with the use of the Leased Property.

11. LESSEE'S OBLIGATION TO PAY TAXES. Lessor shall have no liability for any taxes related to the Leased Property. Lessee, if so liable, shall be required to pay on or before their due dates, all sales taxes, use taxes, ad valorem and personal property taxes, and any other taxes or governmental charges imposed on the Leased Property. Lessee shall promptly notify Lessor and send Lessor copies of any notices, reports, and inquiries received by Lessee from taxing authorities concerning delinquent taxes, fees, charges, or other assessments.

12. CONTESTED TAXES. Lessee shall have the right, at Lessee's own cost and expense, to assert any claim for its exemption from paying taxes, or to contest the validity or amount of any tax referred to in paragraph 11 by legal proceedings promptly instituted and diligently conducted.

13. LESSOR'S RIGHT OF INSPECTION AND REPAIR. Lessor, at its discretion during Lessee's regular hours of operation, and with prior notice to Lessee, has the right to enter the premises where the Leased Property is located or operated, for the purpose of inspecting the Leased Property in order to make a determination of its condition and manner of use. If any Leased Property is not being properly maintained or utilized according to the provisions of this Lease, Lessor has the right, but not the obligation, to have it repaired or maintained at the sole cost and expense of Lessee.

14. NO SALE OR SECURITY INTEREST INTENDED. This Lease constitutes a lease of the Leased Property described hereunder and not a sale or the creation of a security interest. Lessor shall at all times during the lease term retain sole ownership and title of the Leased Property, and Lessee shall not have or at any time acquire any right, title, equity, or other interest in the Leased Property, except the right to possession and use as provided for in this Lease. The Lessee shall have the option to purchase the Leased Property upon termination of this Lease as described in Section 27(b).

15. LESSEE'S OBLIGATION TO INSURE. Lessee agrees at its own cost and expense to maintain in full force and effect insurance against loss, theft, damage, or destruction of the Leased Property in any amount not less than the total replacement value of the Leased Property. Lessee also agrees to carry worker's compensation insurance in compliance with applicable state law, comprehensive public liability and property damage insurance issued by companies satisfactory to Lessor, insuring the interest of Lessor, Lessee, and their directors, officers, employees, and authorized agents and employees in an amount not less than \$1,000,000 per occurrence for personal injury and \$1,000,000 per occurrence for property damage. Lessee agrees to have the insurer furnish to Lessor, no later than ten (10) days after the Lease Commencement Date, a certificate evidencing the insurance coverage required under this paragraph. The Lessee shall name the Lessor, and its directors, officers, employees, and agents, as "additional insureds" on all of the insurance policies specified in this section, or with respect to the worker's compensation insurance, contain waivers of subrogation by the Lessee and the insurance carrier in favor of the Lessor. Not later than thirty (30) days after the effective date of this Lease, the Lessee must provide the Lessor with certificates of insurance to be issued directly to the Lessor by the Lessee's insurance agent, identifying the specified coverage. The Lessee, through its agent of record, shall notify the Lessor of any changes in coverages within thirty (30) days prior to any effective date of change. The Lessee shall be responsible for requiring that its contractors and subcontractors carry and maintain adequate insurance coverage and shall promptly provide written evidence of such to the Lessee.

16. EXCESS LIABILITY INDEMNITY. Lessee agrees to indemnify and hold Lessor, and its directors, officers, employees, and agents, harmless from all loss, liability and expense, including reasonable attorney's fees, in excess of the limits of liability insurance, as may be applicable, caused by or arising out of the ownership, use, operation, condition, possession, maintenance, or storage of the Leased Property except to the extent caused by the gross negligence or willful misconduct of Lessor.

17. RISK OF LIABILITY ASSUMED BY LESSEE. Lessee assumes all risk and liability for the loss of or damage to the Leased Property, for the death of or injury to any person or property of another, and for all other risks and liabilities arising from the use, operation, condition, possession, maintenance, or storage of the Leased Property. Nothing in this Lease shall authorize Lessee or any other person to operate any of the Leased Property so as to impose any liability or obligation on Lessor.

18. LESSEE'S DUTY TO INDEMNIFY. Lessee agrees to indemnify, defend, and hold harmless Lessor, its agents, and employees from all claims, loss, or damage Lessor may sustain for any of the following reasons: (a) loss of or damage to any Leased Property by any cause; (b) injury to, or death of, any person, including but not limited to agents or employees of Lessee; and (c) damage to any property arising from the use, operation, condition, possession, maintenance, storage, delivery, or return, of any Leased Property. Lessee shall reimburse Lessor for all expenses, losses, liabilities, fines, penalties, and claims of every type, including reasonable attorney's fees, imposed on or incurred by Lessor resulting from Lessee's use, operation, condition, possession, maintenance, or storage of any Leased Property, or because of the failure by Lessee to perform any of the terms and provisions of this Lease.

19. ACCIDENT, LOSS OF, OR DAMAGE TO LEASED PROPERTY. If any Leased Property is damaged, lost, stolen, or destroyed as a result of its use, operation, condition, possession, maintenance or storage, Lessee shall promptly notify Lessor of the occurrence and shall file all necessary accident reports, including those required by law and those required by interested insurance companies. Lessee and its employees and agents shall cooperate fully with Lessor and all insurers providing insurance under this Lease in the investigation in defense of all claims or suits. Lessee shall promptly deliver to Lessor all papers, notices, and documents served on, or delivered to, Lessee or its employees and agents in connection with any claim, suit, action, or proceeding at law or in equity commenced or threatened against Lessee or Lessor concerning the Leased Property.

20. OPTIONS OF LESSOR IN THE EVENT OF LOSS OR DAMAGE TO LEASED PROPERTY. In the event of loss or damage of any kind to any item of Leased Property, Lessee, at the option of Lessor, shall: (a) repair and place such property into good repair, condition and working order; or (b) replace such property with like property in good repair, condition, and working order.

21. ASSIGNMENT OR SUBLETTING BY LESSEE. Lessee shall not assign this Lease or the Leased Property or assign any interest in the Lease or Leased Property, or sublet any of the Leased Property, unless Lessor has given its prior written consent to such assignment or subletting.

22. CIRCUMSTANCES CONSTITUTING DEFAULT. At its option, Lessor may by written notice to Lessee declare Lessee in default on the occurrence of any of the following events: (a) failure by Lessee to perform any of its obligations as set forth in this Lease; (b) expiration or cancellation of any insurance policy to be paid for by Lessee as provided for under the terms of this Lease which is not renewed or replaced; (c) involuntary transfer of Lessee's interest in this Lease by operation of law; or (d) Lessee's assignment of any interest in this Lease that is not

authorized as set forth in paragraph 21; provided such occurrence in each case has not been cured within thirty (30) days of Lessor's written notice to Lessee, or if the matter is not one which can be reasonably cured within such thirty (30) day period, within such additional time as may be reasonably necessary, but in any event no more than one hundred eighty (180) days of Lessor's written notice to Lessee as described herein.

23. RIGHTS, REMEDIES AND OBLIGATIONS IN THE EVENT OF DEFAULT. If any default of Lessee as set forth herein shall occur Lessor shall have the right to exercise any one or more of the following remedies: (a) to terminate the Lease and Lessee's rights under this Lease as to any or all items of Leased Property; and (b) to repossess the Leased Property without legal process. Lessee agrees that, upon default, Lessor or Lessor's agent may enter upon any premises where the Leased Property is located and repossess and remove it at the sole cost and expense of Lessee. Lessee specifically waives any right of action Lessee might otherwise have arising out of the entry or repossession, and releases Lessor of any claim for trespass or damage caused by reason of the entry, repossession, or removal. Any repossession of a particular item of Leased Property under this Lease with respect to which Lessee is in default shall not constitute a termination of this Lease as to any other items of Leased Property, unless Lessor expressly so notifies Lessee in writing.

24. REMEDIES CUMULATIVE. The remedies of Lessor as set forth in this Lease are cumulative to the extent permitted by law and may be exercised partially, concurrently, or separately. The exercise of one remedy shall not be deemed to preclude the exercise of any other remedy.

25. FAILURE TO ENFORCE NOT A WAIVER. Any failure or delay on the part of Lessor to exercise any remedy or right under this Lease shall not operate as a waiver. The failure of Lessor to require performance of any of the terms, covenants or provisions of this Lease by Lessee shall not constitute a waiver of any of the rights under this Lease. No forbearance by Lessor to exercise any rights or privileges under this Lease shall be construed as a waiver, but all rights and privileges shall continue in effect as if no forbearance had occurred. Acceptance by Lessor of rent or other payments or performance made by Lessee after default shall not be deemed a waiver of Lessor's rights and remedies arising from Lessee's default. No covenant or condition of this Lease may be waived except by the written consent of Lessor. Any such written waiver of any term of this Lease shall be effective only in the specific instance and for the specific purpose given.

26. SALE OR ENCUMBRANCE. Lessee shall not part with possession or control, sell, or attempt to sell or mortgage any of the Leased Property or otherwise dispose of any interest under this Lease. Lessee shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any Leased Property. On the occurrence of any of these events, Lessee shall be deemed to be in default, at the option of Lessor. Lessee must promptly notify Lessor of any liens, charges, or other encumbrances of which Lessee has knowledge. Lessee must promptly pay or satisfy any obligation from which any lien or encumbrance arises, and shall otherwise keep the Leased Property and all right, title and interest free and clear of all liens, charges and encumbrances. Lessee shall deliver to Lessor appropriate satisfactions, waivers, or evidence of payment of any lien or encumbrance.

27. RETURN OF PROPERTY ON EXPIRATION; OPTION TO PURCHASE.

(a) On the expiration or earlier termination of this Lease with respect to any item of Leased Property, Lessee must return the Leased Property to Lessor in good repair, condition, and working order, less normal wear, tear and depreciation.

(b) Notwithstanding the return provisions set forth in Section 27(a) above, at any time during the term of this Lease, Lessee shall have the option to purchase the Leased Property for the purchase price equal to the net value of the Leased Property as set out on Exhibit C – *Depreciation Schedule* made and incorporated as a part of this Lease. Furthermore, unless otherwise agreed to by the parties, Lessee must purchase the Leased Property on the Lease Termination Date for the purchase price equal to the then depreciated value of the Leased Property as set out on the *Depreciation Schedule*. At the time of Lessee's purchase the Leased Property, upon tender of the payment for the Leased Property to Lessor, the Leased Property will be conveyed by Lessor to Lessee free and clear of all liens or encumbrances and in "AS IS" condition, without warranties, express or implied.

28. RIGHT OF LESSOR TO REPOSSESS. If, upon the expiration or earlier termination of this Lease, Lessee fails or refuses to return the Leased Property to Lessor, Lessor shall have the right to take possession of and remove the Leased Property, at the sole cost and expense of Lessee, and for that purpose to enter any premises where the Leased Property is located, without being liable to Lessee for such removal in any suit, action or other proceedings.

29. PROMOTIONAL CONSIDERATIONS. The parties hereto recognize that Lessee's Center for Conservation, and its relationship to the Zoo, is unique and not a standard commercial undertaking. Lessee agree to collaborate with Lessor on all promotions, advertising and public relations efforts which use the name of Lessee, the Center for Conservation, or the Edwards Aquifer Authority. Each party retains the sole and exclusive rights to its name, and any logos or marks associated with its name, and the use thereof by other parties shall be only with the express written consent of the proprietor of such name and marks in each instance.

30. NOTICES. All notices required to be given under this Lease must be given by certified or registered mail with postage prepaid to the party to be notified and shall be deemed given when mailed to the address last provided in writing by the addressee as follows:

For the Lessor:

EDWARDS AQUIFER AUTHORITY
900 E. Quincy
San Antonio, Texas 78215
ATTENTION: ROLAND RUIZ, GENERAL MANAGER

For the Lessee:

The SAN ANTONIO ZOOLOGICAL SOCIETY, INC.
3903 North St. Mary's Street
San Antonio, Texas 78212
ATTENTION: TIM MORROW, EXECUTIVE DIRECTOR

31. **AMENDMENT AND MODIFICATION.** This Lease shall not be amended, modified, or altered in any manner except in a writing signed by both parties. However, additional property may from time to time be added as the subject matter of this Lease, as agreed upon by the parties. Any additional Leased Property shall be added to the attached *Schedule Of Leased Property* in an amendment describing the property. All amendments to the attached *Schedule Of Leased Property* must be in writing and signed by both parties.

32. **ENTIRE AGREEMENT.** This Lease and the attached Exhibits constitute the entire agreement between the parties. No agreements, representations, or warranties other than those specifically set forth in this Lease or in the annexed schedule shall be binding on any of the parties unless set forth in writing and signed by both parties.

33. **GOVERNING LAW.** This Lease has been executed and delivered and is performable in Bexar County, Texas and shall be interpreted under, and construed in accordance with, the laws of Texas. It is agreed that Texas law shall control the validity of, and the obligations created by, this Lease.

34. **AUTHORITY TO ENTER INTO LEASE.** Each party represents and warrants for the benefit of the other party that: (a) it has the legal authority to enter into this Lease; (b) this Lease has been duly approved and executed; (c) no other authorizations or approvals are or will be necessary in order to approve this Lease and to enable that party to enter into and comply with the terms and conditions of this Lease; (d) the person executing this Lease on behalf of each party has the authority to bind that party; and (e) the party is empowered by law to execute any other agreement or documents and to give such other approvals, in writing or otherwise, as are or may hereafter be required to implement and comply with this Lease.

35. **NON-WAIVER OF IMMUNITY.** Nothing in this Lease is intended as any waiver by the Lessor of any immunity from suit to which it is entitled under Texas law.

[Signature Page Follows]

LESSOR:

The EDWARDS AQUIFER AUTHORITY

Roland Ruiz
General Manager

ATTEST:

Enrique P. Valdivia
Secretary, Board of Directors

APPROVED AS TO FORM:

Darcy Alan Frownfelter
General Counsel

LESSEE:

The SAN ANTONIO ZOOLOGICAL SOCIETY, INC.

Tim Morrow
Executive Director

ATTEST:

Norborne P. "Norb" Cole, Jr.
Secretary, Board of Directors

APPROVED AS TO FORM:

Frank Ruttenberg, Counsel

EXHIBIT A - SCHEDULE OF LEASED PROPERTY

This SCHEDULE OF LEASED PROPERTY is attached to and part of the EQUIPMENT LEASE AGREEMENT between The EDWARDS AQUIFER AUTHORITY (the “Lessor”) and The SAN ANTONIO ZOOLOGICAL SOCIETY, INC. (the “Lessee”). The following is a list and identification of all items of Leased Property:

1. 45’ shipping container – APHU 458637-0;
2. 45’ shipping container – APHU 460194-2;
3. 36’ shipping container – TGHU 855067-5;
4. Cummins generator; and
5. All furniture, furnishings, fixtures, fittings, appliances, apparatuses, equipment, tools, machinery, maintenance supplies, heating, ventilating, air-conditioning, incinerating, lighting, plumbing, and electrical fixtures, hot-water heaters, furnaces, heating controls, motors and boiler pressure systems and equipment provided by Lessor in connection therewith.

Symbol denotes proposed locations for three EAA signs to be installed at SAZOO.

EXHIBIT C – DEPRECIATION SCHEDULE¹

Edwards Aquifer Authority
HCP Salvage Refugia - Pod Assets
In Service Date: 4/1/2016

Asset Name	Date	Net Value	Asset Name	Net Value	Asset Name	Net Value	Net Value Total
<i>Buildings</i>		<i>442,679.36</i>	<i>Generator</i>	<i>114,332.40</i>	<i>Equipment</i>	<i>24,964.42</i>	<i>581,976.18</i>
	Apr-16	440,834.86		113,379.63		24,548.35	578,762.84
	Dec-16	426,078.86		105,757.47		21,219.79	553,056.12
	Dec-17	403,944.86		94,324.23		16,226.95	514,496.04
	Dec-18	381,810.86		82,890.99		11,234.11	475,935.96
	Dec-19	359,676.86		71,457.75		6,241.27	437,375.88
	Dec-20	337,542.86		60,024.51		1,248.43	398,815.80
	Dec-21	315,408.86		48,591.27			364,000.13
	Dec-22	293,274.86		37,158.03			330,432.89
	Dec-23	271,140.86		25,724.79			296,865.65
	Dec-24	249,006.86		14,291.55			263,298.41
	Dec-25	226,872.86		2,858.31			229,731.17
	Dec-26	204,738.86					204,738.86
	Dec-27	182,604.86					182,604.86
	Dec-28	160,470.86					160,470.86
	Dec-29	138,336.86					138,336.86
	Dec-30	116,202.86					116,202.86
	Dec-31	94,068.86					94,068.86
	Dec-32	71,934.86					71,934.86
	Dec-33	49,800.86					49,800.86
	Dec-34	27,666.86					27,666.86
	Dec-35	5,532.86					5,532.86
	Mar-36	(0.00)					(0.00)

¹ A detailed monthly depreciation schedule is available upon request.