

# Happy Hollow Park & Zoo Private Event Agreement

**Organization Name: Happy Hollow Foundation**

**Facility Rental Fee: Waived**

Date of Event	Event Start Time	Event End Time	Attendance	Location
5/26/2022	17:30	19:30	200	Happy Hollow Park & Zoo

Organization Name Happy Hollow Foundation Phone 408-277-3499  
 Applicant's name Lindsay Monroe Primary Phone 408-277-3499 Secondary Phone \_\_\_\_\_  
 Address 1300 Senter Rd. City San Jose Zip Code 95112  
 Email Address lmonroe@hhpz.org  
 Primary Phone 408-277-3499 Cell Phone \_\_\_\_\_  
 Authorized Contacts Name Lindsay Monroe Primary Phone 408-277-3499  
 Additional Authorized Contacts Name Amy Pizarro Primary Phone 408-277-3498

The terms of these Summary Pages are incorporated into the attached Facility Use Agreement between Client and City. These Summary Pages and the attached Agreement are hereby accepted by the parties hereto. All terms used but not defined on these Summary Pages are used as defined in the Agreement.

Signed agreement and down payment of 50% of rental fee is due 90 days prior to event date.  
 Payment of final 50% is due seven days prior to event date  
 First catering guarantee is due 14 days prior to the event date, including count of vegetarian meals, if applicable.  
 Final catering guarantee is due seven days prior to the event date.

Meals, admissions and car parking requested in excess of amounts noted above shall be invoiced following the event with invoice payable upon receipt.  
 Refunds will not be issued for meals. Refunds for excess parking or admission tickets will be refunded within 60 days from the end of the event.  
 Late penalties apply for payments not received by the due date.

**Certificate of Insurance and Endorsement are due 30 days prior to Event date.** Name and dates of Event must appear on the Certificate and Endorsement. Copies of permits, licenses and other documentation described in the list Required Documentation (Exhibit B) attached to this Agreement are due by the dates specified in Exhibit B.

City is holding the dates on the Summary Pages based upon Client's representations regarding the Event and incorporated into this Facility Use Agreement as Exhibit C. Client agrees that the Event will involve no other activities than has been declared in the Facility Use Application and that total attendance (including staff) will not exceed the estimated attendance disclosed on the Facility Use Application or the maximum attendance as adjusted by City to comply with fire safety regulations, if that number is less. Client further understands it is the City's policy that past compliance with the terms of the Facility Use Agreement and past experience with Client's events in City facilities will be taken into account in determining whether to grant dates for Client's subsequent events.

Equipment and services are subject to extra charges at rates established and subject to change by City. Current rates are available upon request. Additional charges are due and payable pursuant to the terms of this Agreement.

## Pricing and Considerations Worksheet

Facility Rental Fee: \_\_\_Waived\_\_\_\_\_

Catering Guarantee Deadline (14 Days before Event)	Final Guarantee (14 Days Before Event)	Initial Deposit Due 30 Days Before Event	Initial Deposit Amount	Final Deposit Amount (Due 7 Days before Event)
Not Applicable	5/12/2022	Not Applicable	Waived	Waived

*Final Guarantee: Catering final guarantee cannot be changed after 14 days before event.*

*Final Parking, Admission, and Catering Invoice will be sent within seven days after event, and will include any expenses in excess of the fees already paid.*

Description of Facility	Hours/Days of Use	Notes
Happy Hollow Entry Plaza	5/26/2022	Guests to use Entry Plaza Carousel
Happy Hollow Upper Zoo	5/26/2022	Guests to use Upper Zoo Area & Tours of Docs Critter Care and the Ranch House. Catered Too will serve passed appetizers, beer and wine

**Equipment & Other Rentals**

Quantity	Item	Price
1	Bar- 2-8'Tables (c2)	
1	Satellite Kitchen	
6	6' Tables (HH) for kitchen	
1	Pop Up Tent with (c2)	
2	Fryers (c2)	
1	Convection Oven (c2)	

Admission For	Parking for	Rental of	Event Coordinator
200	200	Happy Hollow Park & Zoo Entry Plaza & Upper Zoo	Tony Daly

**Facility Rental Pricing:**

- Admission for:
- Parking for:
- Rental of:
- Event Coordinator:


**Additional Services:**

TBD

This Agreement must be properly executed by Client and returned to the Event Coordinator at Happy Hollow Park and Zoo (HHPZ) no later than the date set forth on the Summary Pages. If Client fails to return a properly executed Agreement, without modification, along with the Deposit and Facility Use Fee to the Event Coordinator of PRNS on or prior to the due date set forth herein, City may, in its sole discretion, withdraw its offer of dates and may book another event at the Facility on such dates. If Client fails to pay the balance of the Facility Use Fee or other amount when due, or fails to provide evidence of required insurance (Certificate of Insurance and Endorsement) or the Required Documentation (e.g., permits, licenses) on or prior to the due dates set forth herein, City may, in its sole discretion, revoke permission for Client to use those portions of the Facility described on these Summary Pages at the times set forth on these Summary Pages.

CLIENT, Happy Hollow Foundation

**CITY OF SAN JOSE,  
a municipal corporation**

BY:  APPROVED

 On behalf of Jon Cicirelli

NAME: Amy Pizarro NAME:

Jon Cicirelli

TITLE: Executive Director TITLE:

Director of Parks, Recreation and Neighborhood Services

DATE: 5/9/2022 DATE:

5/10/2022

**APPROVAL AS TO FORM (CITY ATTORNEY):**

**FORM APPROVED BY THE OFFICE OF THE CITY ATTORNEY**  
(The Maximum Compensation of this Agreement is \$100,000 or less.)

**APPROVAL AS TO FORM:**  
AARON YU, CITY ATTORNEY:

\_\_\_\_\_

DATE: \_\_\_\_\_

## PRIVATE EVENT FACILITY USE AGREEMENT

### HAPPY HOLLOW PARK & ZOO

1. **TERM.** This Agreement shall not be effective until both Client and City have executed this Agreement and the Summary Pages ("Effective Date"), and, subject to the terms and conditions of this Agreement, shall have a term (the "Term") commencing on the Effective Date and continuing until the last Event Day set forth on the Summary Pages, unless earlier terminated pursuant to this Agreement. Client's obligation to pay any amounts owed to City hereunder and to abide by the terms of this Agreement, remain in effect until all of such obligations are fulfilled, even if the Event has been completed and Client has moved all of its property out of the Facility.

For purposes of this Agreement, the term "Director" shall mean the Director of the City's Department of Parks, Recreation and Neighborhood Services ("PRNS"), or such other person as may be designated by the City Council or the City Manager from time to time to exercise functions equivalent or similar to those now exercised by the Director. The term Director also includes any person designated by the Director of PRNS to exercise rights and/or obligations of the Director under this Agreement.

2. **FEES AND CHARGES.** For each Event Date identified on the Summary Pages, Client shall pay City in accordance with Section 6 the amount(s) identified on the Summary Pages ("Facility Use Fee"). Client understands that the amount of the Facility Use Fee set forth on the Summary Pages is a minimum amount, based upon representations by the Client as to the amount of space needed by Client.

Client shall also pay when due other fees, charges and amounts due under this Agreement as established by City, as such rates may be modified by City. For example, Client shall owe additional fees for use of the Facility beyond rental hours unless Client has obtained the Director's or his designee's prior consent. Client shall also owe additional fees for services provided by City.

3. **SECURITY DEPOSIT.** Client shall pay a security/cleaning/damage deposit ("Security Deposit") as part of the Facility Use Fee in an amount established by resolution of City Council, as such rates may be modified by City Council. The Security Deposit shall be held by City and may be applied against any unpaid fees, rates or charges, including but not limited to overtime charges, due and owing to City under this Agreement, and/or to compensate City for any costs for cleaning, repair or both. City shall not be required to keep the Security Deposit separate from its funds. If Client performs all of its obligations hereunder and the used area is not damaged and left in as good as or better condition as existed prior to the Event, the Security Deposit will be refunded to Client no more than 30 days following the event, without payment of interest.

4. **PERMISSION TO OCCUPY.** With respect to each Event described on the Summary Pages, City grants Client permission to occupy those portions of the Facility described on the Summary Pages at the times set forth on the Summary Pages. Client shall also be granted non-exclusive access to adjoining corridors and restrooms, as designated by Director. Director may authorize Client to enter the Facility to begin set up of the Event prior to the times set forth on the Summary Page, if the space is not otherwise utilized and Director determines that such authorization is warranted. Client agrees to be bound by the terms of this Agreement if Client enters the Facility prior to the times set forth on the Summary Pages, or if Client remains in the Facility after such times.

Notwithstanding any term hereof to the contrary, this Agreement is not intended to lease or to grant to Client any interest in the Facility. This Agreement merely evidences Client's authorization to use the specified portions of the Facility on the dates set forth on the Summary Pages, subject to the terms and conditions of this Agreement. This Agreement does not grant Client the right to use or occupy any other portion of the

Facility. Furthermore, nothing in this Section 4 shall be construed to allow Client to enter or occupy the Facility at any time other than the times set forth on the Summary Page or unless authorized by Director in writing.

5. **EVENT RESERVATION AND CONFIRMATION.** Client agrees and understands that by executing this Agreement that it is committed to run the Events on the dates specified on the Summary Pages and otherwise in compliance with this Agreement.
6. **PAYMENT.** The Facility Use Fee shall be paid on the dates set forth on the Summary Pages. If Director determines, after review of actual use of the Facility, that Client owes additional amounts for services, or equipment used by Client in connection with the Event, Client shall promptly pay such additional amounts no later than 10 days following the event.

Any invoiced fees and charges are due and payable by Client on or before the thirtieth (30th) day after Client's receipt of City's written invoice and shall be deemed delinquent if not received by City on or before such date. In the event that City does not receive payment of the Facility Use Fee, or any portion thereof, or any other fee or charge within three (3) calendar days of the due date, Client shall pay interest thereon from the due date until the date that full payment is received ("payment date") at a rate equal to 12% per annum or, if such interest rate shall be deemed illegal, at the maximum interest rate then allowed by law. As specified on the Summary Pages, the initial payment must be made on or before the Due Date, without further notice from City, in order for City to execute this Agreement and incur obligation under this Agreement.

Any payments due hereunder shall be payable in lawful money of the United States, to Happy Hollow Park and Zoo, 1300 Senter Rd., San Jose, California 95112, or to such person or at such place as City may designate from time to time in writing, free from all claims, demands, set-offs, or counter-claims of any kind against City.

7. **INSURANCE.** For each Event Day identified on the Summary Pages, Client shall obtain and maintain all of the minimum insurance requirements set forth in Exhibit A, at its sole cost and expense.
8. **INDEMNITY.** Client agrees to defend, indemnify and hold harmless City, its officers, agents and employees from and against any and all claims, demands, causes of action, or liabilities incurred by City, its officers, agents or employees, arising from the Event or as a result of Client's acts or omissions under this Agreement or any act or omission of Client's officers, agents, employees, contractors (including independent contractors), registrants or other persons attending the Event with the express or implied permission or invitation of Client, except as may arise from the gross negligence or willful misconduct of City, its officers, agents, contractors or employees. In an action or claim against City in which Client is defending City, City shall have the right to approve legal counsel providing City's defense and such approval shall not be unreasonably withheld. **Client further agrees to release City, its officers, agents and employees from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of City's property, except as may be caused by the gross negligence or willful misconduct of City, its officers, agents, contractors or employees.**

Client's obligations under this Section shall survive expiration or earlier termination of this Agreement.

8. **WORKERS' COMPENSATION INSURANCE.** Client certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability of Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and certifies that it will comply with such provisions before commencing any activities in connection with this Agreement.
10. **REQUIRED DOCUMENTATION FOR EVENT.** Client shall provide the documentation specified in Exhibit B, attached to this Agreement, no later than the due dates stated in the Exhibit. Failure to comply with any part of this requirement shall result in cancellation by City of permission for Client to use the those portions of the

Facility described on the Summary Pages at the times set forth on the Summary Pages and application of the cancellation fee as provided in Section 15, subsection B, below.

11. **ASSIGNMENT/SUBCONTRACTING.** Client shall not assign, transfer or subcontract its interest in this Agreement, including, without limitation, any of the rights and privileges granted to Client hereunder or its obligations hereunder, to any other person, organization, or corporation. Any attempt to assign, transfer or subcontract such interest may, at City's option, terminate this Agreement.

Notwithstanding the foregoing, Client may assign this Agreement, with the prior written consent of the Director whose consent will not be unreasonably withheld, to a subsidiary or affiliate, to a divisional entity or joint venture entity, to a corporation into which it is merged or if acquired by an entity which acquires all or substantially all of the assets of Client or the Event as a going concern, or to any entity, that directly or indirectly, controls, is controlled by or is under common control with Client.

12. **SCHEDULING.** Unless otherwise specified, in writing, the Director shall have the right to schedule other similar events as may be determined by the Director at any time before or after the dates of this Agreement.

13. **INTERRUPTION OF EVENT/UNAVAILABILITY OF FACILITIES.**

A. **Interruption or Termination; Force Majeure.** If (i) the Facility is damaged so that all practical use of the Facility by Client is prevented or (ii) the City Manager or Director determine that closure of the Facility is necessary in the interest of public health, safety or welfare, or (iii) all practical use of the Facility by Client is prevented by strikes against the City (but not strikes against Client or against any person admitted to the Facility by Client) or by fire, casualty, Acts of God, national emergency, by governmental directive to City or by default of a prior occupant, then City or Client may cancel this Agreement upon notice to the other. In that event, neither party shall have any claim against the other by reason of cancellation. However, if cancellation occurs prior to the Event dates, City shall refund any part of the Facility Use Fee paid by the Client. If the cancellation occurs after the Event dates begin, the Facility Use Fee shall be reduced in the same proportion, which the elapsed time period bears, to the total Event Dates.

B. **Individual Ride or Animal Closures** Client recognizes that the Director or his designee may determine that the closure of an animal exhibit or ride due to weather or safety concerns. Such closure of animal exhibits or rides does not constitute cancellation of this agreement if the Facility may still be used by the Client.

C. **Limit of City's Liability.** Client agrees and acknowledges that City's liability for any termination, interruption or other impairment of the Event for any reason (including, without limitation, City's negligence), other than City's willful misconduct or unlawful acts shall:

(1) be limited to the fees and charges paid by Client to the City for use of the Facility for such Event; and

(2) not include any lost revenue, incidental or consequential damages, or other claims, known or unknown, arising from such termination, interruption, or other claims, known or unknown, arising from such termination, interruption, or other impairment of the Event.

D. **Full Settlement and Release.** Client's acceptance of any refunded or of any adjusted fee or charge, shall be deemed a full waiver, release and settlement of any claims against City, whether known or unknown, resulting from the termination, interruption or impairment of the Event, or with respect to failure to provide such service or equipment (including, without limitation, due to City's negligence). City's refund of any fee or charge or reduction of any fee or charge shall not be deemed an admission of liability on the part of the City, nor shall it modify or increase the limitation of City's liability hereunder.

Client certifies that he or she has read the following statement of California Civil Code Section 1542:

A general release does not extend to claims, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Client hereby waives application of California Civil Code Section 1542 and acknowledges that this means that if he or she should suffer any additional injuries, damages, or losses arising out of the events described in this Section 13 but of which Client is not currently aware and which if known would materially affect Clients decision to execute this release, he or she will not be able to make any claim for those injuries, damages or losses.

The terms of this Section 13 shall survive expiration or earlier termination of this Agreement.

**14. EXPIRATION AND TERMINATION.** Upon the expiration or termination of this Agreement, and upon the termination of any Event authorized by this Agreement, Client shall quit the Facility, and return to the Director all equipment procured from City or Director. Client shall remove from the Facility, or any part thereof, all the property, goods and effects belonging to Client or caused by Client to be brought upon such premises. If any such property is not removed from the Facility by the end of the last Event Date, then the Director may make arrangements to store the same and Client shall pay a reasonable fee for such storage including all other expenses incurred therewith, provided, however, that if Client fails to redeem such property ten days after the event date then City may sell such property, in compliance with laws, at auction or otherwise, for said storage fees and expenses.

**15. TERMINATION.**

**A. Events of Default.** An event of default shall occur under this Agreement upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- (1) Client shall have failed to pay when due any fee, charge or obligation of Client requiring the payment of money under the terms of this Agreement or any other agreement between City and Client for use of the Facility; or
- (2) Client shall have violated the provisions of Sections 11, 21, 22 or 23 of this Agreement; or
- (3) Client shall have failed to maintain any insurance required under Section 7 of this Agreement; or
- (4) Any representation or warranty made by Client hereunder shall have been false or misleading in any material respect as of the date on which such representation or warranty was made; or
- (5) Client shall have failed to perform any material term, covenant, or condition of this Agreement to be performed by Client, other than those specifically referred to in this Section 15; or
- (6) Client shall have failed to perform any material term, covenant or provision required to be performed by Client under any other agreement between City and Client for use of the Facility; or
- (7) Client failed to run an event in any City-owned facility (including the Facility) substantially in conformance with all terms and conditions of the authorization granted by City and/or

Client's representations to City regarding the event, including but not limited to the size or nature of the event; or

- (8) Client becomes insolvent, or takes the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the Federal bankruptcy laws, or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- (9) A petition under any part of the Federal bankruptcy laws, or an action under any present or future insolvency law or statute, is filed against Client and shall not be dismissed within thirty (30) days after the filing thereof; or
- (10) Client shall cancel the Event for reasons other than those granted in Section 13.

**B. CANCELLATION FEE/LIQUIDATED DAMAGES.**

- (1) THE PARTIES HERETO AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGE TO THE CITY IF CLIENT WERE TO TERMINATE THIS AGREEMENT PRIOR TO EXPIRATION OF THE TERM OR WERE OTHERWISE TO BREACH ITS COMMITMENT TO HOLD THE EVENT AT THE FACILITY, INCLUDING IF PERMISSION FOR CLIENT TO USE THE FACILITY IS CANCELLED BY CITY DUE TO CLIENT'S FAILURE TO MAKE PAYMENT OR PROVIDE THE REQUIRED DOCUMENTATION FOR THE EVENT. IN ADDITION TO THE FACILITY USE FEES FOR THE EVENT, CLIENT ACKNOWLEDGES THAT CITY EXPECTS TO RECEIVE OTHER BENEFIT FROM CLIENTS EVENT, WHICH MAY INCLUDE WITHOUT LIMITATION, POSITIVE EXPOSURE FOR THE CITY AND THE FACILITY, LOCAL BUSINESS REVENUES GENERATED BY EVENT ATTENDEES, AND REVENUES FROM FOOD AND BEVERAGE PROVIDED FOR THE EVENT. ALSO, CITY WOULD INCUR ADDITIONAL STAFF AND ADMINISTRATIVE EXPENSE IN REBOOKING THE FACILITY. THE PARTIES MUTUALLY AGREE THAT LIQUIDATED DAMAGES SET FORTH IN THIS SECTION ARE ACCEPTABLE TO EACH PARTY AND ARE A REASONABLE ESTIMATE OF CITY'S LOSS IF CLIENT FAILS TO HOLD THE EVENT AS PROVIDED HEREIN.
- (2) Client agrees to pay to City the following cancellation fee as liquidated damages if Client fails to hold the Event at the Facilities as provided in this Agreement:
  - (a) If Client delivers to City written notice of termination of the Event more than thirty (30) calendar days but less than sixty (60) calendar days prior to the first scheduled Event Date, Client shall pay to City the 50% of the estimated fees set forth on the Summary Pages.
  - (b) If Client delivers to City written notice of termination of such Event more than 48 hours but less than thirty (30) calendar days prior to the first scheduled Event Date, Client shall pay City 75% of the estimated fees set forth on the Summary Pages.
  - (c) If Client delivers to City written notice of termination of such Event less than 48 hours prior to the first scheduled Event Date, Client shall pay City 100% of the estimated fees set forth on the Summary Pages.

No cancellation fee shall be due from Client if City terminates this Agreement pursuant to Sections 13A or 13B nor if Client terminates this Agreement for City's material breach. The cancellation fee shall be due from Client if the permission granted to Client to use those



portions of the Facility described on the Summary Pages at the times set forth on the Summary Pages is cancelled by City due to Client's failure to pay the Facility Use Fee or provide a Certificate of Insurance, Endorsement or any of the required documentation as specified in Section 10 of this Agreement.

- (3) **Time for Payment of Liquidated Damages.** Client shall pay the cancellation fee set forth above no later than thirty (30) days after the date of notice of cancellation or the last scheduled Event Date of the canceled Event, whichever occurs first. Any payments received by City may be applied by City toward the cancellation fee owed pursuant to this Section. Client shall not receive credit for interest on any such amounts.
- (4) **Remedies for Other Breach of the Agreement.** Upon any Event of Default other than Client's failure to hold the Event, City shall have all remedies available at law or in equity or otherwise under this Agreement including, without limitation, termination of this Agreement, to which City may resort cumulatively, or in the alternative and at its election. Damages for Client's breach shall include, without limitation, the Facility Use Fees set forth on Summary Pages.
16. **OPPORTUNITY TO CURE.** Prior to taking any action on account of a breach, which in the good faith judgment of City may be cured by Client, City shall provide to Client oral or written notice, as is practical under the circumstances, of the breach and afford to Client such opportunity, as may be practicable under the circumstances, if any, to correct such breach. However, no failure to give such notice or opportunity shall impair the rights of City.
17. **NOTICES.** All notices and demands which may or are required to be given to either party by the other hereunder shall be in writing and shall be deemed to have been fully given and effective when either delivered personally, faxed, e-mailed or deposited in the U.S. mail, postage prepaid, to Client or City at the addresses set forth in the Summary Pages or any other address subsequently noticed in writing by either party.
18. **MUTUAL WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of a subsequent breach of that or any other provisions of this Agreement.
19. **CONTINUING REPRESENTATION AND COMPLIANCE.** Until Client has discharged each of its obligations under this Agreement, (i) each representation of Client shall be deemed to be reasserted as true and correct on a continuous basis by Client; and (ii) Client shall be deemed to represent to City that it is at all times in compliance with all applicable terms and conditions of this Agreement.
20. **CHANGE IN CIRCUMSTANCES.** Client shall promptly notify City of the occurrence of any Event of Default, including, without limitation, the occurrence of any material event or change in circumstances which renders inaccurate any representation or assertion made to City or which renders Client in violation of any other term or provision of this Agreement. Likewise, City shall promptly notify Client of any material change in the condition or availability of the Facility, equipment or services that City has agreed to provide to Client under this Agreement.
21. **COMPLIANCE WITH LAWS AND REGULATIONS.**
- A. **Americans with Disabilities Act.** Unless caused by alterations or changes made by Client, including Client's agents, representatives, employees, contractors or subcontractors, or caused by Client's (including Client's agents, representatives, employees, contractors or subcontractors) negligence or willful misconduct, City shall be responsible for compliance with Title II of the Americans with Disabilities Act ("ADA") regarding the following fixtures: (i) structural fixtures, including the Facility's elevators and (ii) any doorway of the Facility or any part of the Facility located outside of the event

spaces and meeting rooms used by Client. Nothing herein shall create any obligation on City not required under Title II of the ADA, including without limitation, any retrofit or modification of such fixtures.

For each Event covered by this Agreement, Client shall be responsible for complying with the ADA in connection with (i) setting up and running the Event, including, without limitation, setting up exhibits, seating and access ways in an accessible manner and otherwise removing physical barriers created in connection with the Event, (ii) providing auxiliary aids and services where necessary to ensure effective communication to individuals with disabilities who participate or desire to participate in the Event, (iii) ensuring that exhibitors at the Event, if any, and Client's agents, representatives, employees, contractors and subcontractors each comply with the ADA, and (iv) modifying Client's (and Client's exhibitor's) policies, practices and procedures, as necessary, to enable individuals with disabilities to participate equally in the Event. City's approval of any aspect of Client's activities under this Agreement shall not be deemed or construed in any way as a representation that such item, activity or event complies with the ADA.

- B. Copyright Law.** No copyrighted musical composition shall be played or sung, whether amplified, televised, in the form of a mechanical recording or personal rendition, or otherwise, in connection with any use of the Facility, unless Client shall have first obtained all approvals and paid any license fee or other fee required by the copyright owner. By entering into this Agreement, Client shall indemnify City and its officers and employees and save them free and harmless from and against any and all liability and responsibility whatsoever for any infringement of and/or other violation of the right of any such copyright owner under any copyright law.
- C. Federal, State and Local Laws.** Client shall comply and Client shall ensure that its officers, employees, agents, contractors (including independent contractors), exhibitors, registrants, and Events comply with all federal, state and local laws, ordinances and regulations now or hereinafter in effect, and obtain all permits and licenses, bonds and insurance required for conducting any Event. Client shall take all steps reasonably achievable to ensure that its officers, agents, employees, contractors (including independent contractors), subcontractors, exhibitors, registrants and other persons attending the Events, comply with any rules and regulations regarding use of the Facility established by the Director, as amended from time to time, and with the instructions of Director or authorized City employees.
- D. Illegal Activity.** No performance, exhibition or entertainment, which is illegal, shall be given or held at the Facility. Client covenants that Client, its officers, agents, contractors (including independent contractors), subcontractors, employees, and exhibitors shall not engage in any illegal activity, or permit any of the foregoing persons to engage in any illegal activity, in connection with any performance, exhibit or entertainment at an Event.
- E. Liens.** Client shall keep the Facility free of any liens arising out of any activity at the Facility or materials furnished or obligations incurred by Client in connection with any such activities. Client shall notify City at least ten (10) business days prior to the commencement of any work to be performed or materials to be furnished at the Facility which could give rise to any such lien, and shall post any bonds as required by City. City shall have the right to post and keep on the Facility any notices that may be required by law or which City may deem proper for the protection of City and/or the Facility from such liens.
- F. No Smoking.** Smoking is not permitted in the Facility.

**G. Nondiscrimination.** Client shall not discriminate in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in connection with or related to the Event or with the use of the Facility.

**H. Payment of Taxes.**

**(1) Payment by Client.** Payment of all Federal, State, County and City taxes in connection with the Event shall always be the liability and responsibility of Client. If Client fails to pay any taxes owed in connection with the Event, Director may deduct such taxes from any amounts to be paid by City to Client, if any, and pay them over to the proper representatives of the Federal, State, City or other units of government.

**(2) Possessory Interest Subject to Taxation.** Client recognizes and understands that this Agreement may, but is not intended to, create a real property possessory interest that may be, but is not intended to be, subject to real property taxation and that Client may be subject to the payment of real property taxes levied on such interest. No such possessory interest tax, or any other tax by any governmental entity, shall in any way reduce or substitute for the charges or fees required to be paid as a condition of this Agreement or as otherwise required by City. Client agrees to pay all such taxes when due.

Possessory interest assessments are made by the County of Santa Clara, Office of the County Assessor located at 70 West Hedding Street, San José, CA 95110-1771.

**22. PUBLIC SAFETY.** Client agrees that at all times it shall conduct its activities, and Client shall ensure that its officers, agents, employees, contractors (including independent contractors), subcontractors and exhibitors conduct their activities, with full regard to public safety, and shall observe and abide by all applicable regulations, now in effect or as amended or promulgated from time to time, and requests by City and duly authorized governmental agencies responsible for public safety.

**23. HAZARDOUS MATERIALS.** Client shall not use or permit flammable materials such as bunting, tissue paper, crepe paper, or other flammable items for decorations; and all other materials used for decorative purposes must be treated with flame-proofing and approved by the City's Fire Department. In addition, Client shall not, without the prior written consent of the Director, put up or operate any engine or motor at the Facility or use oils, burning fluids, camphene, kerosene, naphtha, gasoline, or any other flammable chemical, for mechanical or any other purposes, or any agent other than electricity for illuminating any part of the Facility. Subject to the foregoing, Client shall restrict the use of Hazardous Materials at the Facility to those kinds of materials in small quantities that would be normally expected in conducting the activities permitted under this Agreement. Such Hazardous Materials shall only be used in a safe and prudent manner and Client shall take all necessary precautions to prevent releases of Hazardous Materials. Under no circumstances shall Client store, dispose or permit storage or disposal of any Hazardous Materials at the Facility. Client shall comply with all federal, state, and local laws, ordinances, and regulations concerning environmental laws and Hazardous Materials (including, without limitation, City's Hazardous Materials Management Program), and Client shall be responsible for reporting any Hazardous Material releases to the appropriate public agencies. Client shall immediately notify the Director of any release. At Client's sole cost and expense, any release of a Hazardous Material or danger of release of a Hazardous Material shall be corrected immediately. At the sole discretion of City, City may close the Facility without abatement for fees due to City, until such release or danger of release of a Hazardous Material is removed.

Client shall be solely and fully responsible and shall indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required clean-up and remediation of the Hazardous

Materials) arising as a result of the presence or clean-up of Hazardous Materials at the Facility caused in whole or in part by Client. Client's obligations under this Section shall survive the expiration or earlier termination of this Agreement.

As used herein, the term "Hazardous Material" shall mean any substance or material which has been determined by any state, federal or local government authority to be capable of posing risk of injury to health, safety, or property including all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Health and Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Transportation, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the U.S. Department of Health, Education and Welfare, the U.S. Food and Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Material" shall include all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time.

- 24. RULES AND REGULATIONS.** Client shall faithfully comply with the Rules and Regulations for Special Events at Happy Hollow Park & Zoo (Exhibit D) attached hereto, collectively referred to herein as "Rules and Regulations," and all modifications thereof and additions thereto that City may from time to time put into effect. City shall not be responsible for the non-performance of the Rules and Regulations by any other tenant or occupant of the Facility. In the event of any conflict between any provision of this Agreement and any provision of the Rules and Regulations, this Agreement shall control.
- 25. PHOTOGRAPHS AND FILM.** City acknowledges and agrees that it shall hold no ownership or other proprietary interest in any photographs taken or film, video or recordings created by Client incident to Client's use of the Facility under this Agreement.
- 26. MISCELLANEOUS.**
- A. Authorization.** If requested by Director, Client shall deliver to City a resolution of its board of directors, or partnership resolution, evidence of officer signatures and incumbency certificate in form and substance satisfactory to City regarding the due authorization, execution and delivery by Client of this Agreement.
  - B. Consent.** Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent. Any consent or approval granted by City of personnel or contractors operating on behalf of Client is for City's benefit only and is not a warranty that such person is qualified to do the work specified.
  - C. Controlling Law.** Except as Federal law may apply, the parties agree that this Agreement shall be governed and construed by and according to the laws of the State of California.
  - D. Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts shall be an original, but all of which together shall constitute one and the same instrument.

- E. **Entire Agreement.** The parties acknowledge that there are no agreements or understandings regarding the use of the Facility, written or oral, other than this Agreement, and that this Agreement constitutes the full and complete agreement between the parties and shall be controlling in the event of any conflict.
- F. **Gender.** Any reference to the masculine gender shall be deemed to include references to the feminine gender and vice versa.
- G. **Headings.** The section headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- H. **Modification of Agreement.** This Agreement shall not be modified or amended, unless the parties each first agree to and approve of such modification or amendment in writing.
- I. **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall remain in effect.
- J. **Successors and Assigns.** The provisions of this Agreement shall, subject to the provisions of Section 11, apply to and bind the successors and assigns of the parties hereto.
- K. **Time of Essence.** Time is of the essence with respect to this Agreement, and each of the provisions hereof and thereof.
- L. **Venue.** In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

## EXHIBIT A

### INSURANCE REQUIREMENTS

1. **INSURANCE.** Client shall furnish the Director by the time specified in this Agreement, a Certificate of Insurance showing the Client as insured and the following is in force:
  - a) Commercial General Liability: minimum \$1,000,000 combined single limit per occurrence for bodily injury and property damage including products and completed operations;
  - b) Automobile Liability: minimum \$1,000,000 combined single limit per accident for bodily injury and property damage for all owned, hired or non-owned vehicles (if vehicles are used during event, or for setup and dismantling times).
  - c) Liquor Liability (if alcohol is being sold or provided): minimum \$1,000,000 limit per occurrence.
  - d) Workers' Compensation and Employers' Liability: limit of not less than \$1,000,000 per accident as required by the Labor Code of the State of California.
  
2. **ENDORSEMENTS.** Additionally, the Commercial General Liability Certificate must be accompanied by the following endorsements:
  - a) The City of San José, its officers, employees, agents and contractors are named as additional insured.
  - b) Ten (10) day Notice of Cancellation or changes of coverage shall be given to the City of San José.
  - c) The insurance is primary insurance as respects the City, its officials, employees, agents and contractors. Any other insurance the City may have shall be considered excess insurance only.
  - d) Coverage shall state that the Client's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.These requirements are subject to amendment or waiver if so approved in writing by the City's Risk Manager.
  
3. **SUBCONTRACTORS.** The Client shall include all subcontractors as insured under its policies or shall obtain separate Certificates of Insurance and Endorsements for each subcontractor.
  
4. **DEDUCTIBLES AND SELF - INSURED RETENTIONS.** Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Client shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

## EXHIBIT B

### Event Requirements and Required Documentation

All items checked below are documents, permits and licenses that you will need to obtain and /or supply our office with documentation prior to your event. **Important: Failure to meet these requirements will be cause to cancel your event.** If you have questions, please contact the Event Coordinator of Happy Hollow Park & Zoo at (408) 794-6438.

Required Document	Information and Due Dates
<input checked="" type="checkbox"/> <b>Signed Contract, Deposits and Payments</b>	<b>See due dates and payment schedules on your contract</b>
<input checked="" type="checkbox"/> <b>General Liability Insurance</b> – Required by the City	<b>See exhibit C of your contract for requirements:</b> Due to HHPZ 30 days prior to your event
<input checked="" type="checkbox"/> <b>Liquor Liability Insurance</b> – Required by the City when selling alcohol or when alcohol is included in the price of admission or ticket.	<b>See exhibit C of your contract for requirements</b> Due 10 days prior to your event. Mail or Deliver to Happy Hollow Park and Zoo, 1300 Senter Road, San Jose, CA 95112.
<input checked="" type="checkbox"/> <b>Secondary Employment Application and Contract</b> – Required by the City for events where alcohol will be served -.	Application Due with Clients’s signed contract Payment for officers is payable by Client to each individual officer at the event
<input checked="" type="checkbox"/> <b>Requests for equipment and or audio visual equipment and services.</b>	All requests are due to City no later than 30 days prior to the event. Request within 30 days may not be able to be filled and additional fees may apply
<input checked="" type="checkbox"/> <b>Liquor License</b> – The State of CA requires that you obtain a license to sell alcohol if you are selling alcohol or if alcohol is included in the price of admission or the entrance ticket. Only non-profit organizations may obtain a liquor license.	<a href="mailto:SNJ.Direct@abc.ca.gov">SNJ.Direct@abc.ca.gov</a> , Call the ABC application and fees 100 Paseo de San Antonio, Room 119 San Jose, CA 95113 (408) 277-1200 A copy of your Liquor License is Due 10 days prior to your event
<input type="checkbox"/> <b>Fire Safety Special Events Permit Application</b> If your event setup requires Fire Department Approval.	Due with your signed contract – Depending on the type of event fees will be payable to San Jose Fire Department
<input type="checkbox"/> <b>Health Permit</b> – Required when serving or selling food and/or beverages to the public.	If HH Catering is used for food service, this permit may not be required. Contact the Consumer Protection Division 408-918-3400 or <a href="http://www.EHinfo.org">www.EHinfo.org</a> – Fees apply A copy of the permit is Due 10 days prior to your event
<input type="checkbox"/> <b>Raffle Registration</b> – Required by CA Attorney General	Visit: <a href="http://ag.ca.gov/charities/faq.php">http://ag.ca.gov/charities/faq.php</a> or call 916-445-2021 A copy of the permit is Due 10 days prior to your event

## EXHIBIT C

### Rules and Regulations for Private Events at Happy Hollow Park & Zoo

#### Eligibility

1. Event spaces may be used by groups for any banquet, dinner, show, entertainment, amusement, dance, exhibition, lecture, concert, auction, performance or other similar activity whose requirements exceed that of a meeting.
2. The City Manager reserves the right to refuse use of a room for any activity that is deemed in violation of federal, state or local laws, codes or ordinances, or for past failure to comply with any of the stated rules and regulations.
3. Applications must be submitted by an adult, 18 years or older.
4. Each Facility Use Agreement issued by the City for an event shall be for a defined length of time.
5. No Facility Use Agreement shall be issued to any person or organization who has been issued two (2) use agreements during the course of the one year (12 month) period immediately preceding the proposed date for the Event (unless otherwise approved by the Director). For purposes of this provision, the one year period will be calculated on a calendar day basis.

#### Code Compliance

1. Users of the Facilities are required to comply with the requirements of all applicable county, state and federal codes (including health, fire and life safety), laws, regulations, as well as the ordinances and regulations of the City of San José. Users that fail to comply with the above are subject to cancellation of the event.
2. Users will be required to provide evidence that they have obtained the appropriate permits (e.g. fire, health, alcoholic beverage, tow zone, street closures) for their events.
3. Food and beverage service at events must comply with the requirements established by the Santa Clara County, Department of Environmental Health.
4. Users shall observe the established room capacities and any decreases in the room capacity caused by the nature of the event or configuration of the space, as determined by PRNS staff, San José Police Department and/or the San José Fire Department personnel.
5. Smoking is not permitted in any area of Happy Hollow Park & Zoo ("HHPZ").

#### Clean-up and Damage

1. Upon completion of the event, users shall meet with City Staff to review the clean-up of the facility and to determine if additional clean-up measures need to be taken or any repairs are needed. Client agrees to pay costs of repair or replacement for any and all damages to the Facility and other property of City, caused by Client's officers, agents, employees, contractors (including independent contractors), exhibitors, registrants or other persons attending the Event with the express or implied permission or invitation of Client. Such responsibility shall not cover damage caused by the negligence or willful misconduct of City, its officers, agents, contractors or employees. Any final repair costs shall be determined by the Director of PRNS in his or her sole discretion, subject to the approval of the City Manager. In addition, the City shall select and approve the contractors that will conduct any repair work at the City Hall, in City's sole discretion. All repair costs approved by the Director and City Manager will be billed to Client and shall be paid by Client within 10 calendar days of receipt of such invoice.
2. In no case shall users be permitted to physically alter the facilities without the written approval of HHPZ. Nothing shall be attached in any way to the walls, doors, floors, ceiling, or fixtures of HHPZ without the written approval of HHPZ
3. Users are required to use caution to protect all art installations.
4. If any repairs are needed for damages resulting from the user's activities, the City or the entity responsible for maintenance, as appropriate, shall perform the repairs. The user shall be solely responsible for all costs associated with the repairs.
5. The City agrees to repair or replace, as the case may be, any defects or damage to the Facility that are identified in the walk through by Client and City and agreed to by City as likely to interfere with Client's use and occupancy of the Facility.



### **Insurance**

1. Users shall obtain and maintain for the duration of the event insurance as required by the City.
2. The cost of the insurance shall be the responsibility of the user.
3. The City's standard insurance requirements are included in the guidelines for events at HHPZ. The City maintains the right to require higher limits based on the activities of an event.

### **Loading, Unloading and Deliveries**

1. The scheduling of deliveries must be approved in advance by HHPZ. The schedule must note the carrier, items and point of delivery.
2. Specific areas will be designated for loading and unloading to support events at HHPZ.
3. Alternative locations for loading and unloading for events may be coordinated with HHPZ.
4. Unless approved of in advance, a representative of the user must be present at time of delivery. In no case shall the City be responsible for delivered items or sign documents as acceptance of delivery and/or shipment. .
5. Users are responsible for arranging appropriate personnel or equipment for unloading, loading and transportation of deliveries.
6. Users are responsible for maintaining sufficient clearance in passageways and shall maintain exiting requirements.

### **Catering**

1. The catering package from Double H Catering may be reserved in conjunction with an event reservation. If outside caterers are used a service charge may be levied and additional permits may be required.
2. The service or sale of alcoholic beverages is prohibited in HHPZ, unless specifically approved by the Director.
3. Client is responsible for license, insurance and secondary employment if applicable.

### **Signage and Banners**

1. Nothing may be taped, nailed, tacked or otherwise affixed to ceilings, painted surfaces, columns, fabric and decorative walls, or fire sprinklers. All decorative materials must be flameproof in accordance with fire regulations.
2. All A-frame signs must be designed and/or weighted as necessary to resist tip-over under windy conditions.
3. Signs, banners and decorations may not be attached to trees, decorative architectural details, or on art.
4. All other signs and decorations of Outdoor Events shall be placed only upon Users equipment, booths, stage or other similar items comprising a permitted portion of the Event.
5. Balloons and/or use of drones is prohibited on park premises at all times.

### **Parking**

1. Parking fees are outlined in Agreement.

### **Animals**

1. Client may not bring or allow any animals to be brought into the Facility, without the prior written consent of Director, except trained service animals, may enter the Facility without the Director's prior consent. If any animal is brought into the Facility in connection with the Event, Client shall ensure that the animal is adequately controlled and supervised and that all other appropriate safety measures are in place to protect persons in and out of the Facility. Furthermore, Client shall ensure that any animal brought to the Facility is treated in a humane manner and in compliance with all laws regarding transportation and handling of animals and Client shall obtain any additional insurance coverage required by City's Risk Manager prior to allowing an animal to enter the Facility.



- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW


CITY STAFF: Senior Office Specialist  
EMAIL: PRNScontracts@sanjoseca.gov

## SCANNED SIGNATURE AUTHORIZATION

DATE: 5/9/2022 TOTAL PAGES: (INCLUDING THIS PAGE) 1  
TO: Amy Pizarro TO: \_\_\_\_\_  
EMAIL: apizarro@happyhollow.org EMAIL: \_\_\_\_\_  
PHONE: 408-277-3498 PHONE: \_\_\_\_\_

I agree to use electronic signatures

I agree to use electronic signatures

BY: 

BY: \_\_\_\_\_

### DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

### To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF

# City of San José Contract/Agreement Transmittal Form

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**Route Order**

**Attached / Completed**

**Electronically Signed**

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> City Attorney<br><input type="checkbox"/> City Manager<br><input type="checkbox"/> City Clerk <b>OR</b> Return to Dept. (circle one) | <input type="checkbox"/> Insurance Certificates / Waivers<br><input type="checkbox"/> Business Tax Certificate<br><input type="checkbox"/> Contacted Clerk re: Form 700<br><input type="checkbox"/> Supplemental Memorandums (if applicable): Select One | <input checked="checked" type="checkbox"/> Electronically Signed: Yes<br><input type="checkbox"/> Audit Trail Attached (if applicable)<br><input checked="checked" type="checkbox"/> Scanned Signature Authorization |
|---|--|--|

Type of Document: New Contract

Type of Contract: Other

**REQUIRED INFORMATION FOR ALL CONTRACTS:**

Existing GILES # 667618-000

Contractor: Happy Hollow Foundation

Address: 1300 Senter Road San Jose CA 95112

Phone: 408-277-3499 Email: lmoore@hhpz.org

Contract Description: Happy Hollow Park and Zoo will be hosting a private event on May 26, 2022.

Term Start Date: 5/26/2022 Term End Date: 5/26/2022 Extension: No

Method of Procurement: N/A RFB, RFP or RFQ No.: NA Date Conducted: NA

Agenda Date (if applicable): NA Agenda Item No.: NA

Resolution No.: NA Ordinance No.: NA

Original Contract Amount: 0 Amount of Increase/Decrease: 0

Option #: \_\_\_ of \_\_\_ Option Amount: \_\_\_\_\_ NTE/Updated Contract Amount: 0

Fund/Appropriation: R120

Form 700 Required (Selection mandatory for processing): N/A Revenue Agreement: Select one

Tax Certificate No.: PENDING Expiration Date: PENDING

Department: PRNS (64)

Department Contact: PRNScontracts@Sanjoseca.gov Customer (Finance Only): \_\_\_\_\_

Notes: DB#647216

Project Manager: Tony Daly Tony.Daly@sanjoseca.gov

Department Director Signature:  On behalf of Jon Cicirelli 5/10/2022  
Date

Office of the City Manager Signature: \_\_\_\_\_  
Date