

TO: Thalia Stautzenberger
City Secretary

FROM: Naomi Manski *nm*
Assistant to the City Manager

DATE: January 5, 2016

Attached is an original executed Agreement for the use of the Seguin Events Complex for the purpose of operating and conducting the Guadalupe County Fair. The agreement between the City of Seguin and Guadalupe Agricultural and Livestock Fair Association (GALFA).

If there are any questions please let me know.

/nm

Cc: GALFA w/original
Rick Cortes, Assistant City Manager
Andy Quittner, City Attorney
Jack Jones, Director of Parks

AGREEMENT FOR THE USE OF THE SEGUIN EVENTS COMPLEX
FOR THE PURPOSE OF OPERATING AND CONDUCTING
THE GUADALUPE COUNTY FAIR

This Agreement for the use of the Seguin Events Complex (the "Agreement") this day made and entered into by and between the City of Seguin, Texas, a municipal corporation, (the "City"), and Guadalupe Agricultural and Livestock Fair Association, a Texas non-profit corporation, (the "GALFA").

I. Facilities

1.1. With the exception of the Coliseum, during the ten days prior to the second weekend in October through the Wednesday following said weekend the City shall provide to the GALFA the entire Seguin Events Complex (the "Facilities") for its exclusive use in conducting the Guadalupe County Fair. The GALFA shall have use of the Coliseum for a seven (7) day period to be utilized during the fair. In addition to the above the GALFA may use the far eastern section of the Women's Pavilion (minus a twenty foot egress pathway between the inside door and the side outside door to the dance slab) for storage of all of their equipment (including tractor), parade floats, fixtures and furniture used during the fair. All items stored in the Women's Pavilion must be in good working order. GALFA shall not store any broken or unusable items in the storage space, nor shall such space be used for any other purpose other than storage of items other than those used for the Fair. All storage must meet the existing fire codes. The City may visually inspect storage for compliance with this Agreement and GALFA shall immediately remedy any issues or code violations. The total facilities leased are shown on the attached Exhibit "1"

1.2. In addition to the facilities above, the arena shall be made available Monday evenings, subject to prior rental by the City, to the GALFA Drill Team for its use. There will be no charge for the arena's use for this purpose; however the GALFA Drill Team shall pay the actual cost for electricity (measured by the meter serving the arena) used during their practice time. The GALFA shall be responsible for preparing the arena after (as needed) each use by the Drill Team. Failure to maintain the arena may result in loss of use for this purpose.

1.3. On the second Tuesday of each month the City shall make a room available to the GALFA for the purpose of conducting board meetings. This room may be anywhere on the complex depending upon the City's prior needs and rentals.

II. Consideration

With the exception of the Coliseum the City shall provide the Facilities at no cost to the GALFA. The GALFA shall, at least six months in advance, submit a reservation for the Coliseum and pay the required 50% deposit based on the rental fee currently in place. The GALFA shall be charged the current rental fee for a one week use of the Coliseum. Additionally, at the time the Facility is reserved, the GALFA shall pay an initial damage deposit of \$2,500.00 to insure that the Facilities are returned, no later than close of business Wednesday following the fair, in the same condition as existed at the beginning of the rental term. The GALFA shall be responsible for any and all damages caused during their occupation of the Facilities and the costs of timely returning the facilities to the contracted condition should the GALFA fail to do so. Should the cost to the City

(that cost to include the cost of city employees temporarily assigned) to repair damage or clean and otherwise get the premises ready exceed the cost of the damage deposit, the damage deposit for the following year shall be increased to ten percent (10%) above the costs assessed or expended in the previous year.

III. Term

This Agreement shall be effective upon signing by both parties and shall continue in force for a term of ten (10) years, unless terminated in accordance with Section IX, below. The ten year term shall automatically renew for a subsequent ten year term unless either Party submits written notice of its intent not to renew. Notice of nonrenewal shall be delivered no later than six months prior to the end of the final year of the ten year term.

IV. Equipment

4.1 GALFA along with the City and representatives from the Youth Show shall inventory the pens, panels, gates and other accoutrements presently installed in the Facility for which GALFA can provide some proof of ownership. An inventory of this equipment shall be made, including photographs, and shall be attached to this Agreement as Exhibit 2. All such items owned by GALFA that are deemed unusable by the City shall not be included in Exhibit 2 and shall be removed from the Facility no later than February 6, 2016.

4.2 As part of the consideration for this Agreement GALFA agrees that the City shall have the right to freely use all of the items listed in Exhibit 1 for the purposes of operating the Seguin Events Complex. This right of use shall be subject to the following conditions:

A. Should GALFA vacate or otherwise cease using the Facility on or before January 6, 2021, the gates, panels and other equipment listed on Exhibit 1 that the City believes it needs to operate the Facility shall remain in place. After January 6, 2021, GALFA shall remove all such identified equipment within 30 days. Anything not removed shall be deemed abandoned by the City.

B. Should the City terminate the Agreement with GALFA, at any point, GALFA shall have the right and duty to remove the items set forth in Exhibit 2. Anything not removed within 30 days after the date of termination shall be deemed abandoned.

C. During the course of this Agreement the City may be replacing many of the items listed on Exhibit 2. At such time of replacement, the City shall notify GALFA that the specific items of property have been replaced. The replaced property shall then be removed from Exhibit 2. GALFA shall have 30 days from the date of notice to remove the property from the Facility. Failure to remove said property shall be deemed an abandonment of that property.

4.3. The GALFA shall be solely responsible for all other equipment and fixtures owned by the GALFA (not listed on Exhibit 2), such as display cases used in the Women's pavilion, or other items stored temporarily or permanently in the Facilities. At the close of each rental period the GALFA shall be responsible for moving and storing all of its equipment into the space designated for storage by the City. All broken or unusable equipment shall be removed from the premises immediately after the conclusion of the annual Fair.

4.4. GALFA shall be responsible for any and all other equipment needed to conduct the annual County Fair, including port-a-potties, at its own expense.

V. Use of Premises

5.1. In connection with its use of and activities in and about the Facilities, GALFA, at its own expense, will comply, and will cause its employees, agents, and invitees to comply, with all applicable rules and regulations of governmental agencies and of this Agreement. The GALFA shall be responsible for the conduct of all of its employees, agents, volunteers, vendors, subcontractors, and anyone else acting on their behalf or through their authority.

5.2. GALFA agrees that no person shall, on the grounds of race, sex or national origin, be excluded from participating in and be denied the benefits of, or be otherwise subject to discrimination in connection with the Facilities.

5.3. GALFA shall, during the term of this Agreement, provide services in connection with the Facility to all persons without regard to their race, color, religion, sex or national origin.

5.4. GALFA shall coordinate with the City of Seguin Police Department for the provision of security for the Fair. The City Police Department shall make all arrangements to insure that proper security is present. The GALFA shall be responsible for the costs of such security.

5.5. With approval by the City Council that must be sought at least four months in advance, Nelda Street may be closed at South Guadalupe Street and a police officer, at GALFA's expense, shall be assigned to work the intersection for traffic control. South bound traffic on Saunders will not be allowed and the street will be barricaded at the top of the hill (northbound traffic will still be permissible). Portable signs will be placed to direct trucks and vehicle pulling trailers to Jefferson Street to travel west to Legette Street south into the Fairgrounds.

5.6. Requests for Fire/EMS standby for events must be made three months in advance. The City will provide an ambulance, at the current rate, with two paramedics. There is a four hour minimum for each standby call.

5.7. Displays on the upper level courtyard are not allowed in the entire area around the front entrance of the Coliseum. All displays must be showcased around the gazebo.

5.8. Loading and unloading of trucks, cars and other vehicles is not allowed on the upper level courtyard in front of the Coliseum. All loading and unloading shall take place at the loading docks.

5.9. City vehicles and personnel shall be entitled to pass through the parking area and spaces will be provided for City vehicles servicing the Facility during the Fair. The GALFA shall develop and communicate procedures to its volunteers and workers to insure the City has access to the facilities.

5.10. Carnival employees shall not utilize Coliseum restrooms unless properly attired and the Coliseum restrooms shall not be used as an alternative for a bathroom or as a shower facility. Carnival employees are required to utilize Fairgrounds Ball Park facilities and the GALFA shall be required to provide all necessary fencing to secure the Ball Park facilities.

5.11. The GALFA shall monitor the Carnival to insure that proper protection is in place to protect the parking lot and other facilities used by the Carnival, particularly at the end of the fair when the Carnival is breaking down. The GALFA shall be responsible for all damages to the Facilities that occur during the time that the GALFA is using said Facilities, including any damages caused by the Carnival.

VI. Concessions

6.1. The GALFA shall have the right to operate food and drink concessions on the Facility site, except for the coliseum and the concession stand located in the Rodeo Arena. The City's concessionaire shall have the exclusive right to operate within the Coliseum and within the concession stand located in the Rodeo Arena.

6.2. The City's concessionaire shall hold the Texas Alcoholic Beverage Commission license for the Coliseum and the concession stand located in the Rodeo Arena. It shall be the GALFA's responsibility to obtain a temporary permit with the Texas Alcoholic Beverage Commission for its use in the Women's Pavilion, Dance Pavilion and any other area where the GALFA may desire to sell alcoholic beverages. The City shall assist with the mapping of the grounds in order to facilitate obtaining temporary permits.

6.3. The GALFA may maintain a hospitality suite where alcoholic beverages are provided at no cost to the GALFA's VIP's. All beverages provided in a hospitality suite must be consumed in that restricted area, designated by GALFA, and may not be carried onto the general grounds. During time when alcoholic beverages are being provided at the hospitality suite a City of Seguin police officer or Guadalupe County Deputy will be placed as a guard at the suite with authority to enforce this paragraph.

VII. Insurance

7.1. The GALFA shall maintain and provide proof of insurance as follows:

A. Workers' Compensation and Statutory Employer's Liability

B. Commercial General (public) Liability including coverage for the following with a combined single limit for bodily injury and property damage of \$500,000 per occurrence or its equivalent with an aggregate limit of \$1,000,000.00:

- a. Premises operations
- b. Independent contractors
- c. Personal injury
- d. Advertising injury
- e. Contractual liability
- f. Medical payments
- g. Liquor liability
- h. Fire legal liability
- i. City's property in GALFA's care, custody, or control

C. Comprehensive Automobile Liability, including coverage for loading and unloading hazards, with a combined single limit for bodily injury and property damage of \$500,000 per occurrence or equivalent:

- a. Owned/leased vehicles
- b. Non-owned vehicles
- c. Hired vehicles

7.2. Additional policy endorsements. GALFA agrees with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions.

A. Name the City of Seguin and its officers, employees, and elected representatives as an Additional Insured(s), (as the interest of each insured may appear) to all applicable coverage.

B. Provide for a 30 day notice to City for cancellation, non-renewal, or material change.

C. Provide for notice to City at the address shown below by registered mail.

D. GALFA agrees to waive subrogation against the City of Seguin, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance.

E. Provide that all provisions of this agreement concerning liability, duty, and standard of care together shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

F. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for two years after the last date of the fair.

7.3. The Carnival shall carry additional insurance covering its activities with minimum limits of \$1,000,000.00 per occurrence or its equivalent and with an aggregate limit of at least \$5,000,000.00. The City and the Fair GALFA shall be named as additional insured on the Carnival's policies.

VIII. Indemnity

GALFA AGREES TO INDEMNIFY AND HOLD CITY HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES FOR THE DEFENSE THEREOF, ARISING FROM THE CONDUCT OR MANAGEMENT OF GALFA'S BUSINESS OR ITS USE OF THE FACILITY OR FROM ANY BREACH ON THE PART OF GALFA OF ANY CONDITIONS OF THIS AGREEMENT, OR FROM ANY INTENTIONAL ACT OR ACT OF GROSS NEGLIGENCE OF GALFA, ITS AGENTS, CONTRACTORS, EMPLOYEES, SUBTENANTS, GUESTS, OR INVITEES IN OR ABOUT THE FACILITIES. IN CASE OF ANY ACTION OR PROCEEDING BROUGHT AGAINST THE CITY BY REASON OF ANY SUCH CLAIM, GALFA, UPON NOTICE FROM CITY, COVENANTS TO DEFEND SUCH ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO CITY.

IX. Default

9.1 The following events shall be deemed to be events of default by GALFA under this Agreement:

A. GALFA shall fail to comply with any term, provision, or covenant of this Agreement, and shall not cure such failure within twenty (20) days after written notice thereof to GALFA.

B. GALFA shall make an assignment for the benefit of creditors.

C. GALFA shall file a petition under any section or chapter of the U.S. Bankruptcy Code, as amended, or under any similar law or statute of the United States of any state thereof; or GALFA shall be adjudged bankrupt or insolvent in proceedings filed against GALFA thereunder and such adjudication shall not be vacated or set aside or stayed within the time permitted by law.

D. A receiver or trustee shall be appointed for all or substantially all of the assets of GALFA and such receivership shall not be terminated or stayed within the time permitted by law.

E. Failure by the GALFA to return the Facilities, no later than close of business Wednesday following the fair, in the same condition as existing at the start of their rental period where the cost to the City to repair the damage is greater than the amount of the GALFA's deposit.

F. Any damage to or failure to clean the Facility that impairs the City's ability to make the Facility available to another tenant immediately following the GALFAs use thereof.

9.2 In the event GALFA should default as that term is defined in A. above, the City may:

- A. Terminate this Agreement; or
- B. Hold GALFA liable for the performance of the Agreement provision breached up to the amount of the net proceeds of that year's event.

X. Miscellaneous

10.1. All notices provided to be given under this Agreement shall be given by certified mail or registered mail, addressed to the proper party, at the following address:

City	GALFA
City of Seguin	Guadalupe Agricultural &
P.O. Box 591	Livestock Fair GALFA
Seguin, Texas 78156	P.O. Box 334
	Seguin, Texas 78156

10.2. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

10.3. This Agreement is personal to the GALFA and may not be transferred to any other party without prior approval of the City Council, which will not be unreasonably withheld.

10.4. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Guadalupe County, Texas.

10.5. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

10.6. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date here of and duly executed by the parties hereto.

10.7. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

10.8. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

10.9. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be waiver of any other breach of the same or any other term, condition, or covenant contained herein.

10.10. Neither City nor GALFA shall be required to perform any term, condition, or covenant in this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of City or GALFA and which by the exercise of due negligence City or GALFA is unable, wholly or in part, to prevent or overcome.

IN WITNESS WHEREOF, the undersigned City and GALFA hereto execute this Agreement as of 4th day of January, 2018.6

City
The City of Seguin


GALFA
Guadalupe Agricultural and
Livestock Fair GALFA

By: 
Douglas G. Faseler, City Manager

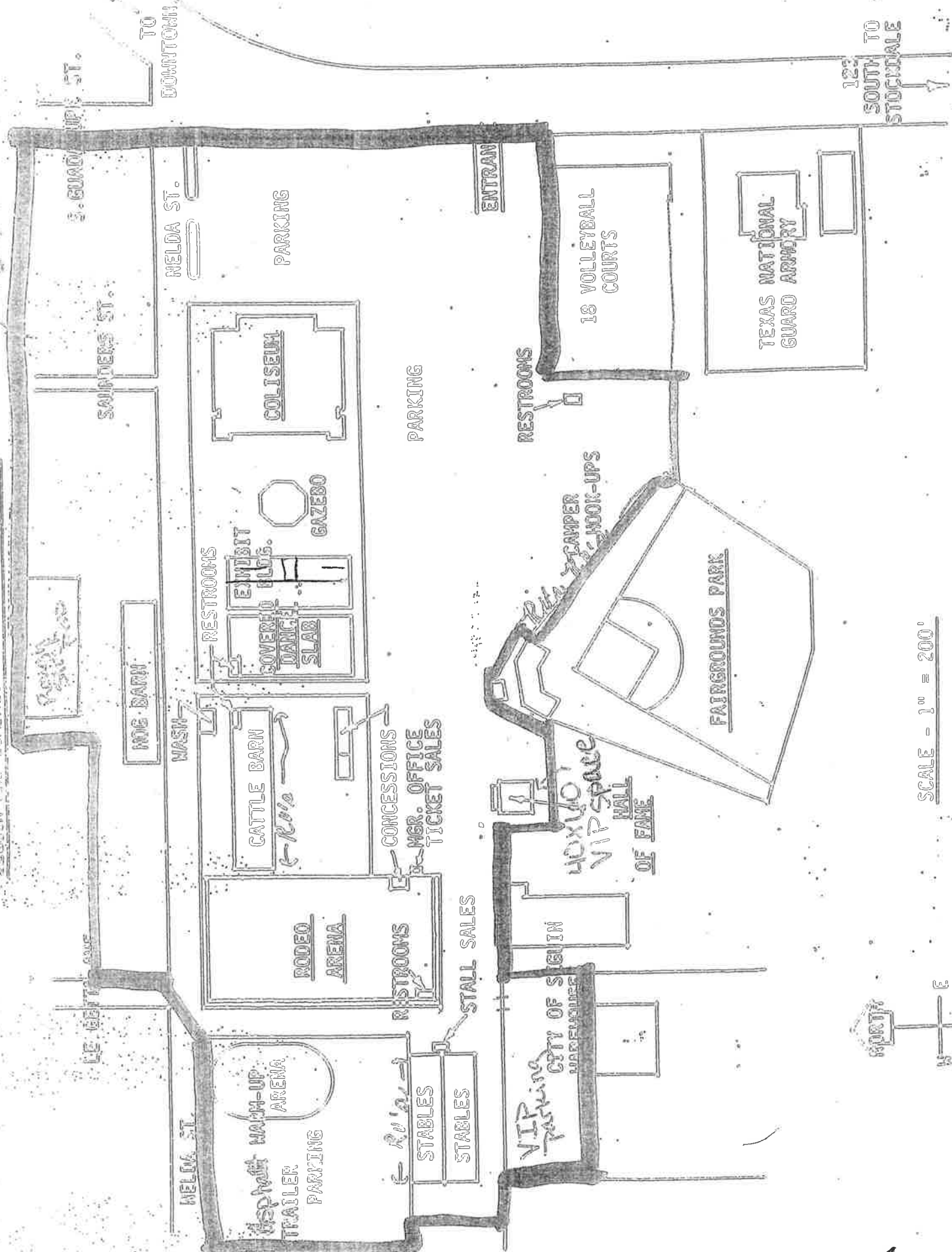
By: 
President

ATTEST:


City Secretary


1st Vice-President

SEGUIN AND GUADALUPE COUNTY FAIRGROUNDS



SCALE - 1" = 200'

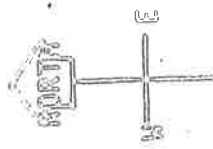


EXHIBIT 1