

ORDINANCE 2018-09-20-0751

**APPROVING A MANAGEMENT AGREEMENT WITH  
BRACKENRIDGE PARK CONSERVANCY FOR A TEN  
(10) YEAR TERM.**

\* \* \* \* \*

**WHEREAS**, the Brackenridge Park Conservancy (BPC) was established in 2009 to serve as a steward and an advocate for the Brackenridge Park to preserve and enhance the park's historical and recreational resources for the enjoyment of current and future generations; and

**WHEREAS**, the BPC's goals are to represent the interests of the park user, unify the park as one cohesive place, and augment resources dedicated to the park, including volunteers, expertise, funding and advocacy; and

**WHEREAS**, BPC has requested a long-term Management Agreement for certain facilities within Brackenridge Park in order to facilitate fund raising opportunities for improvements and renovations to these facilities; and

**WHEREAS**, this Management Agreement will begin upon execution through March 30, 2028; with an additional ten (10) year extension; and

**WHEREAS**, in the first three years of the Management Agreement BPC shall have the exclusive right to redevelop Sunken Garden Theater; and

**WHEREAS**, in the event that BPC raises a minimum of \$500,000 during that time, BPC shall have the continuing exclusive right to redevelop the theater for an additional five years; and

**WHEREAS**, if BPC raises the required funds then a separate operating agreement for the theater will be negotiated and require City Council approval; and

**WHEREAS**, additionally, BPC shall have the right to schedule events at: Joske's Pavilion; Kampman House, Lambert Beach Bathhouse; Restroom/Storage Building; the Pump House; Mexican Village; and Mira Flores; and

**WHEREAS**, BPC shall remain in the current office, located in the old reservations building at Brackenridge Park; and

**WHEREAS**, all facilities will remain in the current condition; and

**WHEREAS**, in the event that BPC secures financial support for improvements or renovations to the facilities or new construction, a public engagement process will be initiated to determine community feedback; and

**WHEREAS**, then, based on the results of the community engagement process, and if deemed appropriate a separate license agreement will be negotiated which will require City Council approval; **NOW THEREFORE:**

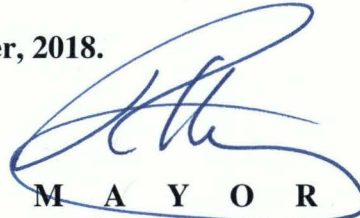
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is hereby authorized to execute a Management Agreement with Brackenridge Park Conservancy for a ten (10) year term. A copy of said amendment is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

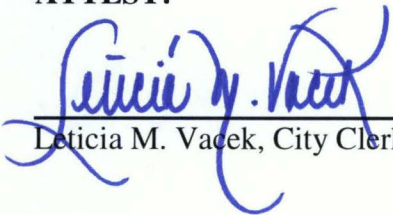
**SECTION 3.** This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED this 20<sup>th</sup> day of September, 2018.**



**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>25 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 )</b>						
<b>Date:</b>	09/20/2018						
<b>Time:</b>	09:35:36 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Ordinance approving a Management Agreement with Brackenridge Park Conservancy for a ten year term. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8	x					
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SW/ah  
9/20/18  
Item No. 25

# **ATTACHMENT I**

STATE OF TEXAS §  
  §  
COUNTY OF BEXAR §

**BRACKENRIDGE PARK CONSERVANCY  
MANAGEMENT AGREEMENT**

This Brackenridge Park Conservancy and Management Agreement (“Agreement”) is made and entered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2018 (“City”), and Brackenridge Park Conservancy, a Texas 501C (3) non-profit corporation (“BPC”).

**WITNESSETH:**

WHEREAS, City is the owner of Brackenridge Park (“Park”), a 343 acre tract of land located in the north central area of San Antonio, adjacent to Broadway, Mulberry, and Hildebrand Streets; and

WHEREAS, The Brackenridge Park Conservancy was established in 2008; and

WHEREAS, the Brackenridge Park Master Plan/Miraflores Master Plan for the Park dated February 21, 2017, was approved by City Council on \_\_\_\_, \_\_\_\_ (“Master Plan”), which provides that BPC should establish and oversee a well-funded strategic management plan to sustain Park programming, development, maintenance, and operations; and

WHEREAS, BPC and City entered into a MOU dated August 13, 2015, pursuant to Ordinance #2015-08-0691 providing for the rental of certain buildings in the Park; and

WHEREAS, City and BPC now wish to enter into an Agreement to reflect rights and responsibilities of the parties with regard to the operation, use, concessions and naming opportunities in the Park;

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**1. TERM**

1.1 The term of this Agreement is ten (10) year, commencing on \_\_\_\_\_ 1, 2018 and expiring on \_\_\_\_\_, 2028, unless earlier terminated as provided under the terms of this Agreement.

1.2 Subject to written consent of both parties, this Agreement may be extended for one additional ten (10) year term, to begin immediately following the initial ten (10) year term.

**2. STRUCTURE OF BPC**

2.1 BPC is a 501(c) 3 non-profit organization, authorized under the rules and regulations of the Internal Revenue Service and shall not modify that status without the prior written approval of City during the term of this Agreement.

2.2 BPC certifies that the Articles of Incorporation attached hereto as Attachment I have been filed with the Secretary of State. BPC further certifies that it has adopted the Bylaws attached hereto as Attachment II. Such Articles of Incorporation and Bylaws shall not be modified without prior notice to City.

2.3 BPC’s Board of Directors shall include the City liaison to the Board as an ex-officio member.

### **3. DEVELOPMENT OF THE PARK**

- 3.1 BPC officers and Boardmembers understand and consent to the Master Plan, and City will collaborate with BPC regarding any future amendments or modifications to the Master Plan which requires approval by the Director of Parks and Recreation and City Council.
- 3.2 City will collaborate with BPC regarding design and construction plans for the development of the Park. BPC acknowledges, however, that the City shall have final approval of design and construction decisions, through the Director of Parks, other City departments, various Boards and Commissions, Community Engagement Process, and through the City Council.
- 3.3 City shall notify the BPC of all community meetings regarding construction plans for the development of the Park.
- 3.4 BPC shall not make, nor allow to be made, any changes or improvements to the Park without the prior written approval of City.

### **4. FUNDRAISING**

- 4.1 BPC shall have the right to pursue corporate and individual donors, sponsorships and apply for grants for funding of capital improvements, programming, educational programs, and other benefits appropriate to the development and use of the Park. BPC acknowledges that City shall also have the right to apply for grants to benefit the Park.
- 4.2 City shall collaborate with the BPC regarding the raising of funds for capital improvements to the Park, including any necessary matching funds. All City provided matching funds shall be subject to the City budget process and City Council Approval. Unless otherwise agreed to the Parties, upon early termination as provided in Section 17, all funds raised but not expended shall be transferred to City by BPC and shall be used for the benefit of the Park.
- 4.3 Donor Acknowledgement:
  - 4.3.1 City and BPC acknowledge their mutual goal of protecting the Park while providing opportunities for recognition of monetary and personal property donations.
  - 4.3.2 *Naming*: All naming requests shall be subject to City Code chapter 6, Article XVI, *Naming of City Facilities and Streets*. BPC shall have the right to seek donations, gifts and requests for recognition in the Park, including naming, in compliance with all applicable City Code provisions, ordinances and approval processes, including but not limited to the design approval of the City's Historic Preservation office. All such actions shall be subject to the prior approval of the Department of Parks and Recreation Director.
  - 4.3.4 *Acknowledgements*: All requests for Donor Acknowledgement are subject to the prior approval of City, through its Director of Parks and all other applicable City officials, including but not limited to the design approval of the City's Historic Preservation office.
  - 4.3.6 *Monuments, Memorials, Markers and Plaques*: All monuments, memorials, markers and plaques will be subject to City of San Antonio Monuments, Memorials, Markers and Plaques Policy.

### **5. EDUCATIONAL PROGRAMS**

- 5.1 BPC shall have the right to propose and implement educational programs concerning the historical, cultural, ecological, environmental, conservational, scientific, horticultural, wildlife, and other aspects of the Park that are of interest to the general public. All educational programs and associated sponsors are subject to coordination and the prior written approval of City.
- 5.2 City shall have the right, but not the obligation, to provide staff and technical support to BPC educational programs.

## **6. EVENTS**

- 6.1 BPC shall have the right to host events at the Park that are open to their membership, the general public, and/or in association with educational programs, fundraising programs, sponsorship programs, or other events appropriate to the Park. BPC shall be responsible for all costs associated with such events, including rental fees for the park facilities. BPC shall be allowed use of Joske's Pavilion at a promotional rate for Special Events.
- 6.2 City shall have the right, but not the obligation, to provide staff and technical support to BPC events and to waive fees as deemed appropriate by the Director.

## **7. PARK OPERATIONS AND MANAGEMENT**

- 7.1 BPC shall have no responsibilities or obligations with regard to the management, maintenance or on-going operation of the Park, except as outlined in this Agreement.
- 7.2 BPC, for the first three years of this agreement, shall have the exclusive right to redevelop Sunken Garden Theater ("Theater"). In the event that BPC raise a minimum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) during that time period, BPC shall have the continuing exclusive right to redevelop the Theater for an additional 5 years. Any renovation, redevelopment, improvements or operational arrangements shall be subject to City Council approval and all appropriate City approval processes. BPC and City shall negotiate in good faith the terms of operating agreement under which the Theater will operate after its redevelopment.
- 7.3 BPC shall have the right, pursuant to this agreement, to take over scheduling and operations of the following Brackenridge Park facilities "As-Is,":
- Lambert Beach Bathhouse
  - Kampman House
  - Restroom/Storage Building
  - the Pump House
  - Mexican Village
  - Mira Flores

All such scheduling and operations shall be subject to the following terms and conditions:

- 7.3.1 BPC shall present written operating policies and procedures for approval by City through the Director of Parks and Recreation.
- 7.3.2 Any fee schedule must be approved by City Council.
- 7.3.3 BPC will collect and retain revenue including use fees, food and beverage sales.
- 7.3.4 BPC shall pay for all operating costs including custodial services, pest services and security.
- 7.3.5 City shall be responsible for structural maintenance, repairs, and utilities.
- 7.4 In the event BPC financially supports renovations to the Joske's Pavilion or to any of the facilities listed in section 7.3, or financially supports construction of a new facility as an extension of one of those listed facilities, BPC and City shall enter into negotiations for a license agreement allowing BPC the right to take over management and operations of such facilities subject to the following terms and conditions:
- 7.4.1 BPC shall develop written operating policies and procedures for approval by City.
- 7.4.2 Any fee schedule must be approved by City Council.
- 7.4.3 BPC will collect and retain revenue including use fees, food and beverage sales.
- 7.4.4 BPC shall pay for all operating costs including, but not limited to, custodial services, pest services, security and utilities
- 7.4.5 BPC shall be responsible for day-to-day maintenance and repairs.
- 7.4.6 BPC shall present a business and operational pro forma to the Director for approval
- 7.4.7 City and BPC shall negotiate a percentage of net revenue to be placed into a dedicated fund for Capital Repair and Replacement

7.4.8 City shall have a right to use up to 10 days per year for City purposes ("City Days") subject only to the actual custodial or other operational costs associated with the City use.

7.4.9 The license agreement will contain other customary and appropriate terms for such a license agreement which shall be subject to City Council approval.

7.5 **Improvements:** City understands and agrees that BPC shall be planning and fundraising for projects to renovate existing facilities or construct new facilities in the park. BPC's fundraising efforts shall potentially include fundraising for all facilities in Brackenridge Park, not solely those facilities listed above as being potentially scheduled or managed by BPC. BPC shall have the right to conduct such planning and fundraising subject to the following guidelines:

7.5.1 For Improvements and new facilities which are expressly referenced in the Brackenridge Park Master Plan, BPC shall proceed with fundraising and development plans with no prior public engagement process. Actual construction of improvements will be subject to a funding agreement negotiated between City and BPC.

7.5.2 For any Improvements or New Facilities not expressly addressed in the Brackenridge Park Master Plan, BPC shall not proceed with fundraising or development plans until such time as it has presented such plans to the public in a substantial public engagement process as approved by the Parks and Recreation Department and the resulting plan is then approved by City Council as an amendment to the Brackenridge Park Master Plan. Actual construction of improvements will be subject to a funding agreement negotiated between City and BPC.

7.6 BPC shall have the right to occupy the office space ("Office Premises") in the Old Reservation Building as depicted on Exhibit A for administrative meeting space and general business office uses. BPC accepts the Office Premises As-Is for the permitted uses. BPC agrees to the following in connection with its use of the Office Premises:

7.6.1 BPC shall pay for all telephone and internet services.

7.6.2 BPC shall provide for all custodial services and keep the Office Premises clean.

7.6.3 BPC shall provide for any necessary pest control services.

7.6.4 BPC shall not use the Office Premises except for general business office purposes.

7.6.5 BPC shall not place any advertisements, signs, decorations or displays on the Office Premises without the prior written approval of the Director of the Parks and Recreation Department.

7.6.6 BPC shall not alter the Office Premises without the prior written approval of the Director of the Parks and Recreation Department.

7.6.7 BPC shall not assign or sublease the Office Premises.

7.6.8 City shall be responsible for the cost of structural maintenance and the cost of water and electric utilities.

## **8. COMMUNICATIONS**

8.1 BPC shall develop and maintain a website that promotes the goals, vision, events, and programs of BPC. BPC shall provide a link on their website to City's Parks website.

8.2 All promotional material developed by BPC shall acknowledge City's ownership of the Park and shall be subject to the prior written approval of City.

## **9. REVENUE AND EXPENDITURES**

9.1 BPC Rights and Responsibilities except for Donor Acknowledgements:

9.1.1 BPC shall collect and retain all revenue associated with its rights and responsibilities under the terms of this Agreement ("Gross Revenue").

9.1.2 BPC may expend funds from Gross Revenue in order to offset the following expenses associated with activities under the terms of this Agreement ("Approved Expenses"):

9.1.2.1 Costs associated with the preparation of the annual Financial Statement;



9.1.2.2 Costs directly associated with the rights and responsibilities of BPC outlined in this Agreement which may include, but not limited: personnel and benefits, insurance, postage/ mailing, telecommunications, advertising/publicity, website hosting/design/administration, Master Plan costs and legal fees.

9.1.2.3 Other expenses as approved by City through the Director of Parks.

9.1.3 At the conclusion of the term of this Agreement, or any extended term, or upon the early termination of this Agreement, all funds shall become the property of City and may only be used for the benefit of the Park.

9.2 BPC Rights and Responsibilities for Donor Acknowledgements:

9.2.1 BPC shall be responsible for the collection of all monetary donations and payment of associated costs, including the cost of design and installation of Donor Acknowledgement improvements.

**10. RECORDS AND REPORTS**

10.1 Throughout the term of this Agreement and any extensions thereof, BPC will maintain complete and accurate permanent financial records of all income and expenditures, including Gross Revenue, Approved Expenses, Net Revenue and deposits to and withdrawals from the Bank Account. Such records will be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation will be preserved in Bexar County, Texas, for at least five (5) years after the creation of the documentation and will be open to City inspection, review and audit following reasonable notification of intent to inspect. City staff, a Certified Public Accountant (CPA), or other auditors as designated by City may perform such audits and/or reviews. City reserves the right to determine the scope of every audit and/or review. In accordance herewith, BPC agrees to make available to City all accounting records.

10.2 On or before (insert date) of each year during the term of this Agreement, or other date that BPC and City may select, BPC shall provide to City:

10.2.1 Financial Statement for BPC's previous fiscal year which has been reviewed by an independent Certified Public Accountant ("Financial Statement"). The Financial Statement will reflect BPC's Gross Revenue, Approved Expenses, Net Revenue as well as documentation of funds received from fundraising, grants and sponsorships. City shall have the right to request copies of statements of the Bank Account in support of the Financial Report.

10.2.2 A report of outlining the Events and activities for BPC's previous fiscal year ("Event and Activity Report"), including:

- Educational programs and other activities
- Officers and Board Members
- Any other pertinent information regarding the actions and/or activities of BPC
- Events in the Facilities, including the name of the party holding the event, type of event, number of attendees, and date and Event starting and ending times.

**11. USE OF THE PARK**

11.1 BPC shall have the right to access the Park for the purposes outlined in the Agreement. Use of the Park for the purposes outlined in the Agreement is subject to coordination and the prior written approval of Director of Parks and the charging of customary fees unless expressly waived by the Director.

11.2 BPC, its members, officers, and Board Members, shall ensure that their use of the Park is in a manner that does not result in damage or modification of the Park and its amenities. BPC shall remove all trash and other debris associated with its use at the end of each episode of use.

11.3 City shall collaborate with BPC at such time that operation of concessions will be considered or proposed within the Park.

11.4 City shall have the right to inspect the Facilities at any time.

**12. INSURANCE**

- 12.1 Prior to the commencement of any work under this Agreement, BPC shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks Department, which shall be clearly labeled "**Brackenridge Park Conservancy**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Parks Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 12.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 12.3 BPC's financial integrity is of interest to the City; therefore, subject to BPC's right to maintain reasonable deductibles in such amounts as are approved by the City, BPC shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at BPC's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

INSURANCE TYPE	LIMITS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
6. First Party Crime Coverage, to include Third Party Crime Coverage Endorsement a. Blanket Crime Coverage	\$ Per Claim on First Party Coverage \$ Per Claim on Third Party Coverage  (Note: Limits are determined by contract value or value of funds in custody of Contractor.)
9. Directors and Officers Liability Insurance	\$1,000,000 per occurrence; \$2,000,000 general aggregate

- 12.4 BPC agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of BPC herein, and provide a certificate of insurance and endorsement that names the BPC and the City as additional insureds. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.
- 12.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). BPC shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. BPC shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Parks Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attn: Contract Services

- 12.6 BPC agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
  - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 12.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, BPC shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend BPC's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 12.8 In addition to any other remedies the City may have upon BPC's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order BPC to stop work hereunder, and/or withhold any payment(s) which become due to BPC hereunder until BPC demonstrates compliance with the requirements hereof.
- 12.9 Nothing herein contained shall be construed as limiting in any way the extent to which BPC may be held responsible for payments of damages to persons or property resulting from BPC's or its subcontractors' performance of the work covered under this Agreement.
- 12.10 It is agreed that BPC's insurance shall be deemed primary and non-contributory with respect to any

insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

- 12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..
- 12.12 BPC and any Subcontractors are responsible for all damage to their own equipment and/or property.

### **13. ASSIGNMENT**

- 13.1 BPC shall not assign this Agreement, or allow same to be assigned by operation of law or otherwise, without the prior written consent of City which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment by BPC without such permission shall constitute grounds for termination of this Agreement by the City.
- 13.2 BPC shall have the right to enter into agreements with one or more contractors to meet BPC's rights and obligations in this Agreement, such contractor agreements to be subject to the review and approval of City, through its Director of Parks. BPC may terminate the rights of any contractor that does not provide an acceptable level of services or does not comply with the provisions of such agreements.

### **14. LIENS PROHIBITED**

- 14.1 BPC shall not suffer or permit any mechanics liens or other liens to be filed against the fee title of the Park or any buildings or improvements in the Park by reason of any work, labor, services, or materials supplied or claimed to have been supplied to BPC.
- 14.2 If any mechanics' liens or materialmen's liens shall be recorded against the Park, or any improvements thereon, BPC shall cause the same to be removed within thirty (30) days after such liens are recorded, or, in the alternative, if BPC in good faith desires to contest the same, BPC shall be privileged to do so, but in such case, BPC hereby agrees to indemnify and save the City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment, such damages to include all costs of court and attorneys' fees.

### **15. INDEMNIFICATION**

- 15.1 **BPC covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to BPC's activities under this Agreement, including any acts or omissions of BPC, any agent, officer, director, representative, employee, consultant or subcontractor of BPC, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BPC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 15.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. BPC shall advise the

City in writing within 24 hours or as soon as practicable of any claim or demand against the City or BPC known to BPC related to or arising out of BPC's activities under this Agreement and shall see to the investigation and defense of such claim or demand at BPC'S cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving BPC of any of its obligations under this paragraph.

#### **16. CONDEMNATION**

- 16.1 It is agreed and understood that in the event the Park is taken, in whole or in part, by any governmental authority other than City, this Agreement and all rights or permissions to use hereunder shall, at the option of the City, cease on the date that title to such land so taken or transferred vests in the condemning authority. BPC hereby waives all rights to any proceeds of such condemnation of the real property owned by the City, but specifically reserves its rights with respect to loss of business and personal property to seek proceeds from condemnation proceeding of the property and any other proceeds that may become available to the BPC under such proceedings.

#### **17. DEFAULT AND REMEDIES**

- 17.1 The following events shall be deemed to be events of default by BPC under this Agreement:
- A. BPC, or its assigns, sublessees, or successors in interest, shall cease to be a non-profit corporation;
  - B. BPC shall fail to comply with any term, provision or covenant of this Agreement and shall not cure such failure within thirty (30) days after written notice thereof to BPC, unless BPC has undertaken to affect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.
  - C. BPC initiates any construction or improvement(s) without prior written approval of City.
- 17.2 Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, the City may declare this Agreement and all rights and interests created by it to be created by it to be terminated, may seek any and all damages occasioned by BPC's default hereunder, or may seek any other remedies available at law or in equity.
- 17.3 All rights, options and remedies of the City contained in this Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or at equity, whether or not stated in this Agreement. No waiver by the City of a breach of any of the covenants, conditions, or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.
- 17.4 Either party shall have authority to terminate this Agreement by providing six (6) months written notice to the other party.

#### **18. MISCELLANEOUS PROVISIONS**

- 18.1 BPC shall observe and comply with all Federal, State and local laws, regulations, ordinances, and codes pertaining to its activities under this Agreement. In the event that following the date of this Agreement the City should modify its laws and/or ordinances, and (i) the operations of the BPC otherwise carried out in conformance with the terms of this Agreement are found to be in violation of the terms of this Agreement due to the change in the City laws and/or ordinances, (ii) the City elects to enforce the terms of this Agreement to remedy such default, and (iii) the remedy exercised by City will impair the ability of the BPC to continue to operate in the manner it has in the past under this Agreement, BPC may elect to terminate this Agreement.
- 18.2 BPC covenants and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.

**19. SEPARABILITY**

- 19.1 If any clause or provision of this Agreement is illegal, invalid or unenforceable under provision of this Agreement that is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

**20. NOTICES**

- 20.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City of San Antonio  
Parks & Recreation Department  
Attn: Director  
P.O. Box 839966  
San Antonio, TX 78283

Brackenridge Park Conservancy  
Attn: Executive Director  
P.O. Box 6311  
San Antonio, TX 78209

- 20.2 Notices requesting information, requiring action or approval shall be acknowledged in writing by the receiving party within thirty (30) calendar days. Both parties shall timely review notices, not unreasonably withhold requested information and agree not to unreasonably withhold approval when such is required.

**21. ENTIRE AGREEMENT/AMENDMENT**

- 21.1 This Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire Agreement between the parties, any other written or parole Agreement with City being expressly waived by BPC.
- 21.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 21.3 It is understood that the Charter of the City requires that all contracts with the City be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

**22. TEXAS LAW TO APPLY**

- 22.1 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 BEXAR COUNTY, TEXAS.

**23. GENDER**

- 23.1 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.

**24. PARTIES BOUND**

- 24.1 If there shall be more than one party designated as BPC in this Agreement, they shall each be bound jointly and severally hereunder.
- 24.2 The covenants and promises herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by City.

**25. CAPTIONS**

25.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

**26. CONFLICT OF INTEREST**

26.1 BPC acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City-owned utilities.

26.2 BPC warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City owned utilities.

**27. AUTHORITY**

27.1 The signer of this Agreement for BPC hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of BPC.

27.2 City's Director of Parks, or designee, shall be City's principal agent for monitoring the BPC's compliance with this Agreement and shall be City's representative responsible for City's administration of this Agreement. The Director, for the City, shall have full authority for any approvals under this Agreement unless otherwise specifically required.

27.2 Unless written notification by BPC to the contrary is received and approved by City, the President or designee shall be BPC's designated representative responsible for the management of all contractual matters pertaining to this Agreement.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and affect of an original this the \_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT**

**BRACKENRIDGE PARK CONSERVANCY**

By: \_\_\_\_\_  
Xavier D. Urrutia, Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Attachment I – Brackenridge Park Conservancy Articles of Incorporation  
Attachment II – Brackenridge Park Conservancy Bylaws

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