SW/vv
08/13/15
Item #11

AN ORDINANCE 2015-08-13-0691

AUTHORIZING A LEASE AGREEMENT WITH THE BRACKENRIDGE PARK CONSERVANCY FOR THREE (3) YEARS, BEGINNING ON SEPTEMBER 1, 2015, AND ENDING ON SEPTEMBER 30, 2018, WITH THE OPTION TO EXERCISE TWO (2), ONE-YEAR ADMINISTRATIVE RENEWAL PERIODS FOR THE USE OF THE FORMER RESERVATION BUILDING AT BRACKENRIDGE PARK FOR THE PURPOSE OF OPERATIONAL AND MEETING SPACE FOR ADMINISTRATIVE OPERATIONS.

* * * * *

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

WHEREAS, in August, 2009, City Council approved a Lease with BPC for an office space within the former park reservation building without rental fees, which was subsequently renewed through August 31, 2015; and

WHEREAS, Council also approved a Memorandum of Understanding (MOU) in 2009 to acknowledge the BPC's advisory function regarding the development of Brackenridge Park and the fund raising and stewardship role BPC serves for the park; and

WHEREAS, the MOU was renewed through August 31, 2016; and

WHEREAS, in addition to educational programs and tours established in the park, the BPC has provided a total amount of $37,600.00 for improvements to the park since 2009; and

WHEREAS, currently, the City is not utilizing the former park reservation building and the BPC has expressed a desire to renovate and use the entire interior of the building for BPC's operational and administrative purposes; and

WHEREAS, therefore, the City and BPC desire to combine the features of the MOU and the expiring Lease Agreement into a new Lease Agreement for the entire interior of the former park reservation building without incurring rental fees, for a term of three (3) years with two (2) one-year renewal periods, and align the term with the City's Fiscal Year; and

WHEREAS, the current Lease Agreement terminates on August 31, 2015, and the proposed new Lease Agreement will maintain BPC's presence at Brackenridge Park through September 30, 2018, with the option to extend the lease for two (2) additional one-year terms; and

SW/vv
08/13/15
Item #11

WHEREAS, in lieu of rent, BPC will make significant renovations to the premises and will continue to operate and provide input on the development of the park and the Master Plan and will serve as one of the forums for the exchange of ideas regarding capital improvement of the park. BPC will have the right to apply for grants for funding of capital improvements, programming, educational programs, and other benefits appropriate to the enhancement and use of the Park, subject to City 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 authorized to execute a Lease Agreement with the Brackenridge Park Conservancy for three (3) years, beginning on September 1, 2015, and ending on September 30, 2018, with the option to exercise two (2), one-year administrative renewal periods for the use of the former reservation building at Brackenridge Park for the purpose of operational and meeting space for administrative operations. A copy of the lease agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 226000000000 and General Ledger 4407720.

SECTION 3. 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 4. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 13th day of August, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**11 (in consent vote: 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21)**
Date:	08/13/2015
Time:	01:41:04 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Lease Agreement with the Brackenridge Park Conservancy for three years, beginning on September 1, 2015, and ending on September 30, 2018, with the option to exercise two, one-year administrative renewal periods for the use of the former reservation building at Brackenridge Park for the purpose of operational and meeting space for administrative operations. [Xavier D. Urrutia, Interim Assistant City Manager; Janet A. Martin, Acting Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x			x	
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Lease Agreement
Brackenridge Park Conservancy

Table of Contents

1. Basic Information, Definitions. 1
2. Grant. 2
3. Rent and Consideration. 2
4. Term, Renewal. 2
5. Tenant's Affirmative Promises. 3
6. Indemnity. 4
7. Tenant's Negative Promises. 5
8. Landlord's Affirmative Promises. 5
9. Landlord's Negative Promise. 6
10. Alterations and Improvement. 6
11. Insurance. 7
12. Release of Claims/Subrogation. 10
13. Landlord's Municipal Powers. 11
14. Prohibited Interests in Contracts 11
15. Non-Discrimination 12
16. Casualty/Total or Partial Destruction. 12
17. Condemnation/Substantial or Partial Taking. 12
18. Holdover. 12
19. Default, Remedies for Default. 12
20. Warranty Disclaimer. 15
21. Abandoned Property. 15
22. Appropriations. 15
23. Sublease, Assignment. 15
24. Dispute Resolution. 15
25. Miscellaneous. 16
26. Development of Brackenridge Park 18
27. Public Information. 22

1. Basic Information, Definitions.

Authorizing Ordinance: _____

Landlord:	City of San Antonio, through its Parks and Recreation Department
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Parks and Recreation Department)
Tenant:	Brackenridge Park Conservancy
Tenant's Address:	PO Box 6311, San Antonio, Texas 78209

Premises:	One office within Brackenridge Park Building ("Building"), which is depicted on Exhibit A
Permitted Use:	Operational and meeting space for administrative operations.
Occupancy Commencement Date:	September 1, 2015
Term:	Primary Term of three (3) years and one month, with option for two (2), one-year renewals.
Base Rent:	None: see Section 3 below

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises, from Landlord on the terms and conditions of this Lease.

3. Rent and Consideration.

3.01. Tenant shall pay no rent to Landlord under the terms of this Lease. In exchange for utilization of Premises, Tenant shall assist in Landlord's efforts to improve Brackenridge Park through Tenant's fundraising plan to monetarily assist Landlord in making capital improvements to Brackenridge Park as required in Section 4 of the Brackenridge Park Conservancy Agreement. Tenant may also propose and implement educational programs and host events at Brackenridge Park that are of interest to Tenant's membership and the general public. Tenant will additionally be invited to provide input and participate in community meetings concerning an update to the Brackenridge Park Master Plan.

4. Term, Renewal.

4.01. The term of this Lease is three (3) years and one month, beginning on September 1, 2015 with the option to exercise two (2), one-year administrative renewal terms, without further consideration by City Council.

4.02. Either party may terminate this lease with thirty (30) days written notice.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises including Landlord's existing fixtures and equipment, in their present condition "AS IS," the Premises being currently suitable for Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises; and (c) any rules and regulations for the Premises as adopted by Landlord.

5.03. Pay for installation and use of Tenant's telephone and internet services.

5.04. Provide custodial services for Premises and keep Premises reasonably clean and free of litter.

5.05. Lock exterior doors and arm existing security system at all times when exiting the Premises. At such times as the security system is not functioning, Tenant shall have no obligation to arm the system. Landlord shall be responsible for payment of security system services.

5.06. Allow Landlord to enter the Premises to perform Landlord's obligations and inspect the Premises.

5.07. Allow Landlord, CPS and SAWS to enter the Premises to access utility meters serving the Premises.

5.08. Return the Premises to Landlord in the same condition as accepted in Section 5.01., normal wear excepted.

5.09. After casualty loss not terminating the Lease, rebuild any interior partitions, ceilings, wiring, light fixtures, and plumbing.

5.10. Vacate the Premises and return all keys to the Premises on the last day of the Term.

5.11. On request, execute an estoppel certificate that states the Commencement Date, and Termination Date of the Lease, identifies any amendments to the Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice.

5.12. Comply with all local, State, and Federal laws and regulations in regard to operation, maintenance, and improvement to the Premises. Prior to beginning any construction or improvement to the Premises, Tenant will obtain approval from the Historic Design and Review Commission.

6. Indemnity.

6.01. Tenant covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, 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 Tenant's activities under this Agreement, including any acts or omissions of Tenant, any agent, officer, director, representative, employee, consultant or subcontractor of Tenant, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the City of San Antonio, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVLEY 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, AND WITHOUT WAIVING ANY CHARITABLE IMMUNITY OF TENANT UNDER TEXAS LAW.

6.02. 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. Tenant shall advise Landlord in writing within 24 hours of any claim or demand against Landlord or Tenant known to Tenant related to or arising out of Tenant's activities under this Lease and shall see to the investigation and defense of such claim or demand at Tenant's cost. Landlord shall have the right, at its option and at its own expense, to participate in such defense without relieving Tenant of any of its obligations under this paragraph.

7. Tenant's Negative Promises.

Tenant promises that it will not:

7.01. Use the Premises for any purpose other than the Permitted Use.

7.02. Create a nuisance.

7.03. Permit waste of electric or water utilities as provided by Landlord at Landlord's sole expense.

7.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Premises.

7.05. Change Landlord's lock system.

7.06 Alter the Premises without prior written permission from Landlord.

7.07. Allow a lien to be placed on the Premises.

7.08. Will not place advertisements, signs, decorations or displays in, on or about the Premises without the prior written approval of Landlord. Temporary signage acknowledging sponsors of events may be allowed with the sign and location subject to the approval of Landlord.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date.

8.02. Repair and maintain the entire structure containing Premises, and all associated HVAC, electrical, and plumbing systems at Landlord's sole expense. Landlord will maintain the exterior of the building and the surrounding grounds, provide security and alarm systems and pest control for the building, and provide the existing electrical and water/sewer service to the Premises at no cost to Tenant.

8.03. Obey all applicable laws with respect to Landlord's operation of the building and surrounding land.

8.05. No provision in this agreement shall be interpreted to obligate the Landlord to make any capital improvements or extraordinary repairs to any portions of the Premises. Tenant reserves the right to request such repairs subject to Landlord's discretion. Landlord has the right, but not the obligation to choose to

make capital improvements or extraordinary repairs as Landlord deems appropriate and subject to available funding.

8.06. If capital repair of the building or capital repair or replacement of one or more systems becomes cost prohibitive or becomes otherwise irreparable for an extended length of time, Landlord may terminate this Lease.

8.07. Should Landlord's decision not to make a capital improvement or extraordinary repair render the Premises untenable for the Tenant's use purposes, Tenant has an option to terminate this Lease by notifying Landlord in writing within 10 days of when the request for repair is denied.

9. Landlord's Negative Promise.

9.01. Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10. Alterations and Improvement.

10.01. Tenant shall not install and/or construct improvements on Premises without prior written approval of Landlord. During any period of construction or installation, Tenant, its members, employees, agents, and contractors shall ensure that the performance of said construction or installation does not cause or result in damage to Landlord's property or adjoining property.

10.02. Tenant shall present, for review and written approval, all designs, plans and specifications to Landlord and applicable review boards prior to commencing any construction or installation upon Premises. While Landlord may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by Tenant. Landlord reserves the right to enter Premises at any time to inspect construction in progress and/or to determine the condition of Premises so as to insure Tenant's compliance with this Agreement.

10.03. Tenant agrees that it shall obtain any and all plans; approvals, necessary permits, and clearances from appropriate local, state, and Federal regulatory agencies. A copy of said permits or clearances shall be provided to Landlord prior to the start of any construction. Tenant covenants that it shall not bind, or attempt to bind, Landlord for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the Landlord against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to Tenant during the performance of any said construction and against any claim of injury to person or property.

10.04. The approval by Landlord of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans.

Such plans and specifications are not approved for architectural or engineering design and Landlord, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

10.05. All modifications made to the Premises will be the property of Landlord.

10.06. During any periods of time that modifications are occurring within the Premises, Tenant's contractors will be required to secure Builder's Risk insurance, if requested by Landlord, and provide Landlord with a certificate of insurance evidencing such coverage.

10.07. Landlord shall not have any responsibility for making any modifications or capital repairs or capital improvements to the Premises.

10. 08. Landlord shall have the right to make repairs and improvements to Premises. Tenant agrees to work cooperatively with Landlord to facilitate these improvements.

10.09. Tenant shall have the right, within thirty (30) days after the termination of this Agreement, whether such termination be by the expiration of the term or an earlier termination under any provision of this Agreement, to remove from the Premises all of its furniture, equipment and furnishings and other property which are not the property of Landlord and have not become the property of Landlord as herein provided or by attachment to the Premises, and with respect to any damage caused thereby, it shall have the obligation to restore the Premises to its condition prior to such removal, and provided that, if any of Tenant's property remains in or on the Premises after ninety (90) days following termination of this Lease and no renewal agreement has been executed, such property as remains thereon shall be deemed to have become the property of Landlord and may be disposed of as Landlord sees fit, without liability to account to Tenant for the proceeds of any sale thereof.

11. Insurance.

11.01. Prior to the commencement of any work under this Agreement, Tenant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to City, 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. City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the Landlord. Landlord shall have no duty to pay or

perform under this Agreement until such certificate and endorsements have been received and approved by Landlord. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.02. 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.

11.03. Tenant's financial integrity is of interest to City; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by the City, Tenant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Tenant'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:

TYPE	AMOUNTS
1. Workers' Compensation Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
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. Property Insurance: For physical damage to the property of Lessee, including improvements and betterment to the Leased premises, if applicable	Coverage for a minimum of eighty percent (80%) of the replacement cost of Lessee's property.

*If applicable.

11.04. Tenant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Tenant herein, and provide a certificate of insurance and endorsement that names

the Tenant 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.

11.05 As they apply to the limits required by City, 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). Tenant 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. Tenant shall pay any costs incurred resulting from said changes.

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

11.06. Tenant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

A. Name City (the City of San Antonio), 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;

B. 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;

C. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

D. 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.

11.07. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Tenant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Tenant'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.

11.08. In addition to any other remedies the City may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Tenant to stop work hereunder, and/or withhold any payment(s) which become due to Tenant hereunder until Tenant demonstrates compliance with the requirements hereof.

11.09. Nothing herein contained shall be construed as limiting in any way the extent to which Tenant may be held responsible for payments of damages to persons or property resulting from Tenant's or its subcontractors' performance of the work covered under this Agreement.

11.10. It is agreed that Tenant'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.

11.11. 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 City shall be limited to insurance coverage provided.

11.12. Tenant and any Subcontractors are responsible for all damage to their own equipment and/or property.

12. Release of Claims/Subrogation.

12.01. The insurance requirements of this Lease are a bargained-for allocation of risk of loss. City and Tenant release each other from claims arising from injury or loss to either of them or to third parties to which they are liable, if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this lease. City and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims.

13. Landlord's Municipal Powers.

13.01. Landlord is a municipality as well as Landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as Landlord or entitles Tenant to any relief under this Lease , except that Tenant may terminate this lease with 10 days written notice if Landlord's exercise of municipal powers makes the premises undesirable to Tenant, in Tenant's sole discretion. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as Landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if Landlord were a private entity.

14. Prohibited Interests in Contracts.

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a Landlord officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the Landlord or any Landlord agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the Landlord or in the sale to the Landlord of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

14.01.01. City officer or employee;

14.01.02. his parent, child or spouse;

14.01.03. a business entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the business entity, or (b) 10% or more of the fair market value of the business entity;

14.01.04. a business entity in which any individual or entity above listed is a (a) subcontractor on a City contract, (b) a partner, or (c) a parent or subsidiary business entity.

14.02. Tenant warrants and certifies as follows:

14.02.01. Tenant and its officers, employees and agents are neither officers nor employees of the City.

14.02.02. Tenant has tendered to the City a Discretionary Contracts

Disclosure Statement in compliance with the City's Ethics Code.

14.03. Tenant acknowledges that Landlord's reliance on the above warranties and certifications is reasonable.

15. Non-Discrimination

15.01. As a party to this contract, Tenant understands 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, unless exempted by state or federal law, or as otherwise established herein.

16. Casualty/Total or Partial Destruction.

16.01. If the Premises are damaged by casualty Tenant may terminate this Lease.

17. Condemnation/Substantial or Partial Taking.

17.01. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, Tenant may terminate this Lease.

18. Holdover

18.01. If Tenant holds over after termination of this Lease, it is a Tenant at sufferance under the terms of this Lease.

19. Default, Remedies for Default.

19.01. *Events of Default.* If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

19.01.01. Tenant fails to comply with any term, provision or covenant of this Lease and does not cure such failure within 30 days after written notice thereof to Tenant, or any representation or warranty by Tenant of this Lease is false or misleading in any material respect when given to Landlord.

19.01.02. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant

against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

19.01.03. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business within the Premises, or fails to commence business operations at the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

19.01.04. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

19.01.05. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

19.01.06. This Lease or the estate of Tenant hereunder is transferred to or passes to any other person or party except in a manner permitted herein.

19.02. *Remedies for Default.* Upon the occurrence of any Tenant event of default, Landlord has the option to pursue any one or more of the following:

19.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. Upon termination, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

19.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefore without having terminated the Lease.

19.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever

Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

19.03 *Repossession and Alteration of Locks*. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

19.04. *Obligation to Reimburse*. If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

19.05. *Default by Landlord*. If Landlord defaults, Tenant's exclusive remedy is termination of this lease effective in written notice to Landlord (Tenant thereby waives the benefit of any laws granting it a lien upon the property of Landlord or of rent due Landlord). Landlord has no further liability to Tenant for an act of default. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

19.06. *Cumulative Remedies*. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant, in the event that Landlord prevails in any litigation instituted against Tenant.

20. Warranty Disclaimer.

20.01. There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Without limitation, this Lease contains no express or implied warranty that the Premises have no latent defects or that the Premises are or will remain suitable for Tenant's purposes.

20.02. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

21. Abandoned Property.

21.01. Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

22. Appropriations.

22.01. All obligations of Landlord under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, Landlord may terminate this Lease and have no further liability.

23. Sublease, Assignment.

23.01. Tenant cannot assign or sublease this Lease without the prior written approval of Landlord. Assignments include any transaction in which (a) a material part of Tenant's assets are sold outside the ordinary course of business or (b) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

24. Dispute Resolution.

24.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

24.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after

appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

24.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

24.04. The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

24.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (a) the copy of the contract before the court is authentic and (b) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

24.06. Mediator fees must be borne equally.

24.07. The parties need not mediate before going to court (a) for either party to seek emergency injunctive relief or (b) for Landlord to seek forcible entry and detainer relief against Tenant.

25. Miscellaneous.

25.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

25.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

25.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

25.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

25.05. *Modification.* Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

25.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

25.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

25.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

25.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

25.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

25.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

25.12. *Administrative Actions and Agreements.* The Director of Parks and Recreation may, without further Council action, agree to, sign, and deliver on behalf of Landlord all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this Lease and may declare Tenant defaults and pursue remedies for such defaults, including terminating this Lease. This paragraph does not authorize lease amendments or renewals without Council consent.

25.13. *Conflicts Between Numbers Stated Two Ways.* Whenever this Lease states numbers more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

25.14. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

25.15. *Structure of Brackenridge Park Conservancy*

25.15.01. BPC is a non-profit organization, and shall not modify that status without the prior written approval of Landlord during the term of this Lease.

25.15.02. BPC certifies that the Certificate of Formation – Nonprofit Corporation attached hereto as Attachment II has been filed with the Secretary of State. BPC further certifies that it has adopted the By-laws attached hereto as Attachment III. The provisions of such Certificate of Formation and by-laws shall not be modified without the prior written approval of Landlord.

25.15.03. BPC's Board of Directors shall consist of no more than 21 members and no fewer than 3 members. The San Antonio Parks and Recreation Director or designee shall serve as liaison to the Board. Landlord liaison to the Board shall have full rights of access to all meetings and all records of BPC.

25.16. *Financial Records.* Throughout the term of this Lease, BPC shall maintain complete and accurate permanent financial records related to its rights and obligations under the terms of this Lease. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted accounting principles. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to Landlord inspections, review, and audit following reasonable notification of intent to inspect.

26. Development of Brackenridge Park.

26.01. *Brackenridge Park Master Plan and Park Improvements.*

26.01.01. Landlord completed a Brackenridge Park Master Plan in 1979 and subsequent updates in 1997 and in 2015. BPC has the right to participate in all meetings and potential interviews, and shall work cooperatively with Landlord and Landlord's Contractor on Park Improvements and the approved 2015 Brackenridge Park Master Plan and any future updates, not including routine repair and maintenance projects.

BPC hereby acknowledges that any update to the master Plan and Park Improvements will be subject to the availability of funding.

26.01.02. Landlord shall invite input from BPC regarding Landlord initiated updates to the Master Plan and Park Improvements at the beginning of project planning, but no later than the development of project scope of work. In the event that the scope of work for a Park Improvement is defined by the source of funding, Landlord shall invite the input of BPC regarding the development of the design at the time and to the extent that Landlord has input into that design process. Landlord will make all final design and construction decisions, through its Parks and Recreation Department, other City departments, various Boards and Commissions, and through City Council.

26.01.03. BPC may, through its board, provide to Park Stakeholders any information provided to BPC under Sections 26.01.01. and 26.01.02.

26.01.04. BPC shall not make, nor allow to be made, any changes or improvements to the Park without the prior written approval of Landlord.

26.02. *Fundraising.*

26.02.01. BPC shall have the right to apply for grants for funding of capital improvements, programming, educational programs, master plan update and other benefits appropriate to the enhancement and use of the Park. BPC acknowledges that Landlord shall also have the right to apply for grants to benefit the Park. Landlord and BPC shall coordinate and communicate regarding all grant submissions.

26.02.02. BPC shall develop a fundraising plan to identify fundraising opportunities to benefit the Park. BPC will make reasonable efforts to coordinate with Park Tenants and others regarding fundraising.

26.02.03. BPC shall have the right to pursue opportunities for sponsorships to benefit the Park.

26.02.04. BPC shall coordinate with Landlord regarding the raising of funds for capital improvements to the park. Landlord agrees that the BPC shall serve as one of the forums for the exchange of ideas regarding capital improvement. Unless otherwise agreed by the parties, upon early termination as provided in Section 4.02, all funds raised but not expended shall be transferred to Landlord by BPC and shall be used for the benefit of the park.

26.03. *Educational Programs.*

26.03.01. 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 require prior written approval of Landlord, and approval shall not be unreasonably withheld or delayed.

26.03.02. Landlord shall have the right, but not the obligation, to provide staff and technical support to BPC educational programs.

26.04. *Events.*

26.04.01. BPC shall have the right to host events at the Park that are open to Friends of BPC, the general public, and/or in association with educational programs, fundraising programs, sponsorship programs, or other events appropriate to the Park. All events require prior written approval of Landlord and must be coordinated with other Brackenridge Park tenants in advance of the event.

26.04.02. Landlord shall have the right, but not the obligation, to provide staff and technical support to BPC events.

26.05. *Park Operations and Management.*

26.05.01. BPC shall work cooperatively with all parties with which Landlord has a contractual relationship for the use of the Park ("Park Tenants"). In this endeavor, the goal of BPC shall be to enhance the Park experience for visitors, identify and facilitate opportunities for events involving multiple Park Tenants, facilitate and encourage projects among Park Tenants, and ensure that all Park Tenants are informed regarding the efforts and programs of BPC.

26.05.02. BPC shall have no responsibilities or obligations with regard to the management, maintenance or on-going operation of the Park. In the event that Landlord elects to develop an operations and management plan for the Park, BPC shall provide input to Landlord on the development and implementation of this operations and maintenance plan.

26.06. *Communications.*

26.06.01. BPC shall have the right to develop a web-site that promotes the goals, vision, events, and programs of BPC. BPC shall provide a link on

their web-site to Landlord's web-site.

26.06.02. All promotional material, such as event invitations and media releases, developed by BPC shall acknowledge the Landlord's ownership of the Park and require prior written approval of Landlord.

26.07. *Annual Report to Landlord.*

26.07.01. On or before March 31st of each year during the term of this Lease, BPC shall provide a report to Landlord ("Annual Report") outlining BPC's plan for the upcoming fiscal year, and completed activities for the prior fiscal year, for the following:

(a) Fundraising, grants, and sponsorships
(b) Educational programs, events, and other activities
(c) Officers and Board Members

26.08. *Use of the Park.*

26.08.01. BPC shall have the right to access the Park for the purposes outlined in the Lease.

26.08.02. 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.

26.08.03. BPC shall have no right to conduct any concession operations or other uses of the Park as outlined in the Lease without the prior written approval of Landlord.

26.08.04. Landlord shall coordinate reservations within the park and will report upcoming reservations and events to the BPC as requested.

27. Public Information.

27.01. Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this agreement waives an otherwise applicable exception to disclosure.

In Witness Whereof, the parties have caused their representatives to set their hands.

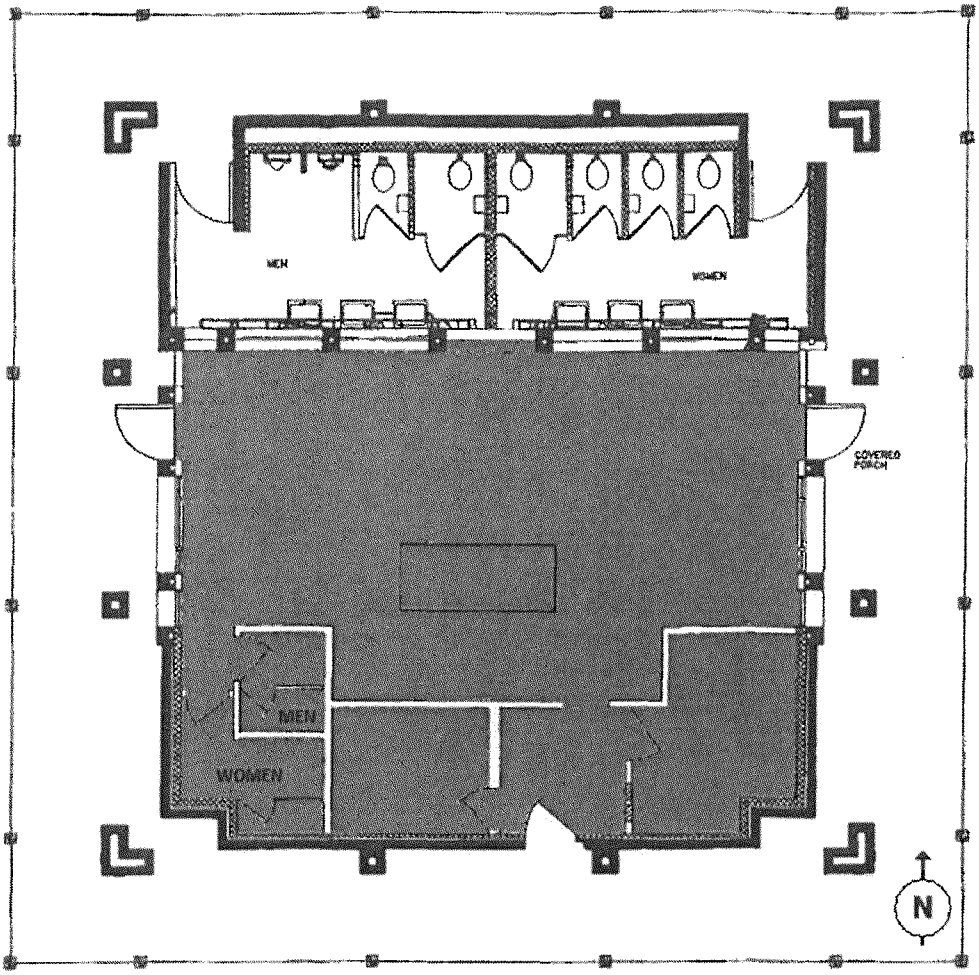
Landlord:	**Tenant:**
City of San Antonio, a Texas Municipal Corporation	**Brackenridge Park Conservancy**
Signature:_____	Signature:
Printed Name: Sheryl Sculley, City Manager	Printed Name: Timothy N. Tuggey, Board President
Date: _____	Date: 7/15/15

Approved as to Form:

_____
City Attorney

Attachments: Exhibit A Premises

EXHIBIT A
Premises
The Old Reservation Building at Brackenridge Park



= Office Space Leased to Brackenridge Park Conservancy