SW/vv
12/03/15
Item #16

AN ORDINANCE 2015-12-03-1019

AUTHORIZING A LEASE AGREEMENT WITH THE PHIL HARDBERGER PARK CONSERVANCY FOR USE OF THE HISTORIC HOMESTEAD STRUCTURE AT PHIL HARDBERGER PARK FOR A TERM COMMENCING UPON EXECUTION AND TERMINATING DECEMBER 31, 2025, WITH ONE OPTIONAL TEN-YEAR RENEWAL PERIOD.

* * * * *

WHEREAS, through the 2007-2012 Bond Program, the City acquired a 311 acre tract of land located in the north central area of San Antonio which is now Phil Hardberger Park; and

WHEREAS, the acquisition and development of the park was the signature project among the 69 park projects included in the 2007-2012 Bond Program; and

WHEREAS, acquisition of the parkland included the historic limestone house, which was the original homestead on the property and vacant for an extended period of time; and

WHEREAS, the Phil Hardberger Park Conservancy (the Conservancy) privately funded over $250,000.00 in renovations to the limestone house with the intent to lease the structure for administrative use in support of its mission to advocate renewal, recreation and learning through nature in an urban setting; and

WHEREAS, today, the Conservancy continues to assist in the City's efforts to develop, raise funds, provide educational programs and host events to improve the park; and

WHEREAS, the proposed lease will accommodate the administrative needs of the Conservancy while allowing them to have a link to and on-site presence at the park directly supporting its mission and vision for excellence in development of the park; and

WHEREAS, additionally, in lieu of rent, the Conservancy will be responsible for payment of utilities and maintenance of the interior of the premises; and

WHEREAS, the Lease Agreement will commence upon execution and terminate December 31, 2025, with one (1) optional ten-year (10) renewal period; **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 Phil Hardberger Park Conservancy for use of the historic homestead structure at Phil Hardberger Park for a term commencing upon execution and terminating December 31, 2025, with one (1) optional ten-year

(10) renewal period. A copy of the lease agreement, in substantially final form, 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 3rd day of December, 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:	**16 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14A, 14B, 14C, 14D, 16, 19, 20, 23, 25, 26)**
Date:	12/03/2015
Time:	09:20:46 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Lease Agreement with the Phil Hardberger Park Conservancy for use of the historic homestead structure at Phil Hardberger Park for a term commencing upon execution and terminating December 31, 2025, with one optional ten-year renewal period. [María D. Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks and Recreation]
Result:	Passed

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

Lease Agreement

Phil Hardberger Park Conservancy Office

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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:	Phil Hardberger Park Conservancy
Tenant's Address:	115 E. Travis, Ste. 1004, San Antonio TX 78205

Premises:	The original homestead, which is the limestone house at Phil Hardberger Park ("Building"), as described in Exhibit A.
Permitted Use:	Office, meeting and conference room space for administrative purposes and other uses as may be approved by City through its Director of Parks and Recreation.
Commencement Date:	Upon Execution
Initial Term:	Primary Term of ten (10) years, with option for one (1) ten (10) year renewal
Base Rent:	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.

2.02. Tenant's right of occupancy begins at the Occupancy Commencement Date.

3. Rent and Consideration.

3.01. Tenant shall pay no rent to Landlord under the terms of this Lease. Parties will work cooperatively to establish separate electrical utility connections on a meter independent from all other facilities at Phil Hardberger Park. City will bear all costs associated with establishing separate electrical utility and meter connections. At such time as separate electrical utility connections are established, tenant shall pay all costs for electrical utilities in consideration for utilization of Premises.

3.02 Tenant shall also assist in Landlord's efforts in development, fundraising, providing educational programs and hosting events to improve Hardberger Park as outlined in Article 25 of this Agreement.

4. Term, Renewal.

4.01. The term of this Lease will expire December 31, 2025, commencing on the Commencement Date shown above, with one, ten-year renewal option subject to City Council approval, unless sooner terminated as provided in this Lease.

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 described in Exhibit A in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

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

5.03. Tenant will be solely responsible for all electric utility usage and will transfer CPS accounts into Tenant's name. At the end of this lease, Tenant will work cooperatively with Landlord to facilitate the transfer of all electric utility accounts back into Landlord's name.

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

5.05. Allow Landlord, CPS and SAWS to enter the Premises to access utility infrastructure serving the Premises.

5.06. Repair, replace, and maintain in good condition all interior parts of the Premises, to include custodial and cleaning activities, and regular maintenance checks on mechanical units.

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

5.08. Vacate the Premises and return all keys to the Premises on the last day of the Term, subject to any holdover rights.

5.09. On request, execute an estoppel certificate that states the Occupancy 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.

6. Indemnity.

6.01. Tenant covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, Landlord 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 Landlord 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 Landlord, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT TENANT AND LANDLORD 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.

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 the 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.

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

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

8. Landlord's Affirmative Promises.

Landlord promises that it will:

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

8.02. Maintain the exterior of the Premises and the surrounding grounds.

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

8.04. Provide security and alarm systems for the premises.

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 building. 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. Should the 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 may not, without the prior written approval of City, construct, or allow to be constructed, any permanent improvements to the Premises or make or allow to be made any permanent alternations to the structures within the Premises without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. If approved by the City's Parks and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined in 10.01 b) and c) outlined above.

10.02. Tenant shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.

10.03. The approval by the City 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 the City, 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.

10.04. It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by Tenant and at any time placed or maintained by Tenant on any part of the Premises shall be and remain the property of the Tenant; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Premises shall become the property of the Landlord from and after the time that such improvements are made and shall remain the property of the Landlord after the termination of this Lease.

10.05. Landlord shall not be responsible or liable for, and Tenant covenants that it will not bind or attempt to bind, Landlord for payment of any money in connection with any Improvements to the Premises.

10.6. During any periods of time that Improvements are occurring within the Leased 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 capital repairs or capital improvements to the Premises.

11. Insurance.

11.01. Prior to the commencement of any work under this Lease and throughout the term of this Lease, Tenant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "**Phil Hardberger Park Conservancy Lease**" 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. Landlord 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 Landlord. Landlord shall have no duty to pay or perform under this Lease until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.02. Landlord reserves the right to review the insurance requirements of this Article during the effective period of this Lease 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 Lease. In no instance will Landlord allow modification whereby Landlord may incur increased risk.

11.03. Tenant's financial integrity is of interest to Landlord; therefore, subject to Tenant's right to maintain reasonable deductibles in such amounts as are approved by Landlord, Tenant shall obtain and maintain in full force and effect for the duration of this Lease, 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
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	For Bodily Injury and Property Damage of $500,000000 per occurrence;

e. Contractual Liability	

*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 Landlord as additional insureds. Respondent shall provide Landlord 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 Landlord, Landlord 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:

- 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.

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 Lease.

11.08. In addition to any other remedies Landlord may have upon Tenant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, Landlord 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 Lease.

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 Lease.

11.11. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Lease and that no claim or action by or on behalf of Landlord 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. Landlord 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. Landlord 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. 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 its 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 City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City 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. a 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 City'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. Default, Remedies for Default.

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

18.01.01. 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.

18.01.02. 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.

18.01.03. 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 on the Premises, or fails to commence business operations in the Premises on or before the Occupancy 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.

18.01.04. 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.

18.01.05. 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.

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

18.02.01. 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.

18.02.02. 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.

18.02.03. 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.

18.03. *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.

18.04. *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.

18.05. *Default by Landlord.* If Landlord defaults, Tenant's exclusive remedy is termination of this lease effective on written notice to Landlord (Tenant thereby waives the benefit of any laws granting it a lien upon the property of Landlord or on 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.**

18.06. *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.

19. Warranty Disclaimer.

19.01. 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.

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

20. Abandoned Property.

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

21. Appropriations.

21.01.All obligations of the City of San Antonio 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, the City may terminate this Lease and have no further liability.

22. Sublease, Assignment.

22.01. 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.

23. Dispute Resolution.

23.01. 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.

23.02. 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.

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

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

23.05. 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.

23.06. Mediator fees must be borne equally.

23.07. 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.

24. Miscellaneous.

24.01. *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.

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

24.03. *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.

24.04. *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.

24.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any terms of this Agreement may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (a) to apply any other term or condition or (b) to apply the same term or condition to a later or earlier occasion. Any modification of this Lease must be authorized by an ordinance adopted by City Council that specifically addresses the modification.

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

24.07. *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.

24.08. *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.

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

24.10. *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.

24.11. *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.

24.12. *Administrative Actions and Agreements.* The Director of Parks and Recreation may, without further Council action, agree to, sign, and deliver on behalf of the City 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.

24.13. *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.

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

24.15. S*tructure of Phil Hardberger Park Conservancy*

24.15.01. Tenant shall maintain its non-profit status and shall not modify that status without the prior written approval of Landlord during the term of this Agreement.

24.15.02. Tenant agrees that its articles of Incorporation and by-laws shall not be modified without prior notice to Landlord.

24.15.03. The Landlord's liaison from its Parks and Recreation Department to the Board shall have full rights of access to all meetings and all records of Tenant.

25. Development of Phil Hardberger Park.

25.01. *Development of Phil Hardberger Park*

25.01.01 Landlord will collaborate with Tenant regarding any future amendments or modifications to the Phil Hardberger Park Master Plan.

25.01.02 Landlord will collaborate with Tenant regarding design and construction plans for the development of the park. Tenant acknowledges, however, that the Landlord will make all final design and construction decisions, through Landlord, other City departments, various Boards and Commissions and through the City Council.

25.01.03 Landlord shall notify Tenant of all community meetings regarding construction plans for the development of the Park.

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

25.02. *Fundraising*

25.02.01. Tenant shall have the right to pursue corporate and individual donors, sponsorships and apply for grants or funding of capital improvements, programming, educational programs, and other benefits appropriate to the development and use of the Park. All grant applications, donors and sponsorships shall be subject to the prior approval of Landlord. Tenant acknowledges that Landlord shall also have the right to apply for grants to benefit the Park.

25.02.02. Landlord shall collaborate with Tenant regarding the raising of funds for capital improvements to the Park, including any necessary matching funds. Unless otherwise agreed to the parties, upon early termination as provided in Section 4.02, all funds raised but not expended shall be transferred to Landlord by Tenant and shall be used for the benefit of the Park.

25.03. *Educational Programs*

25.03.01. Tenant 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 Landlord.

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

25.04. *Events*

25.04.01. Tenant 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 program, fundraising programs, sponsorship programs, or other events appropriate to the Park. All events and associated events sponsors are subject to coordination and the prior written approval of Landlord.

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

25.05. *Park Operations and Management*

Tenant shall have no responsibilities or obligations with regard to the management, maintenance or on-going operation of the Park. Landlord will fund and manage the operations plan for the Park. Landlord shall collaborate with the Tenant regarding operations and maintenance plan for the Park.

25.06. *Communications*

25.06.01. Tenant shall have the right to develop and maintain a web-site that promotes the goals, vision, events, and programs of Tenant. Tenant shall provide a link on their web-site to Landlord's Phil Hardberger Park website.

25.06.02. All promotional material developed by Tenant shall acknowledge Landlord's ownership of the Park and shall be subject to the prior written approval of Landlord.

25.07. *Annual Report to City*

On or before September 30 of each year during the term of this Agreement, Tenant shall provide a written report to the Landlord Director ("Annual Report") outlining Tenant's plan for the following calendar year, and completed activities for the previous calendar year, for the following:

(b) Fundraising, grants, and sponsorships
(c) Educational programs, events, and other activities
(d) Officers and Board Members
(e) Changes in By-laws or Articles of Incorporation
(f) Any other pertinent information regarding the actions and/or activities of Tenant

25.08. *Use of the Park*

25.08.01. Tenant shall have the right to access the Park for the purposes outlined in this Agreement, subject to coordination and prior written approval of Landlord.

25.08.02. Tenant, 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. Tenant shall remove all trash and other debris associated with its use at the end of each episode of use.

25.08.03. Tenant shall have no right to conduct any concession operations or other uses of the Park without the prior written approval of Landlord.

25.09. *Financial Records*

Throughout the term of this Agreement, Tenant shall maintain complete and accurate permanent financial records related to its rights and obligations under the terms of this Agreement. Such records shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to City inspections, review, and audit following reasonable notification of intent to inspect.

26. Public Information

26.01. 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	**Phil Hardberger Park Conservancy**
Signature:_____	Signature: Betty Sutherland
Sheryl Sculley, City Manager	Betty Sutherland, Director
Date:_____	Date: 11-10-15

Approved as to Form:

_____

City Attorney

Attachment: Exhibit A: "Premises"