

THE STATE OF TEXAS       §  
  §  
COUNTY OF DALLAS       §

MANAGEMENT AND OPERATION AGREEMENT  
FOR OLD CITY PARK

THIS AGREEMENT ("Agreement") is entered into this the 26th day of May, 1993 (the "Effective Date"), by and between the City of Dallas, a municipal corporation (the "City"), acting by and through its ~~Park and Recreation Board and~~ the Dallas County Heritage Society (the "Society"), d/b/a Old City Park, a Texas non-profit corporation, duly incorporated under and by virtue of the laws of the State of Texas.

WITNESSETH

(All references in this Agreement to any employee, official, or department of the City shall be deemed to include any persons or departments succeeding to the authority of the employee, official or department so referenced without regard to changes in names, titles or reorganization.)

WHEREAS, the Society is organized to promote and foster the preservation of the architecture, history and culture related to Texas, and particularly of the North Central portion of the State; and

WHEREAS, the City and the Society entered into contracts dated March 27, 1967, February 26, 1973, and October 5, 1983, for the relocation and reconstruction of certain buildings located on the municipal park known as "Old City Park," for the public display and operation of such buildings; and

WHEREAS, such buildings and structures have been relocated by the Society, which has been displaying and operating same; and

WHEREAS, the City and the Society desire to develop a Museum in Old City Park or any enlargement thereof as mutually accepted in the Master Plan or revisions thereto; and

WHEREAS, Old City Park is to be a museum of the architecture and cultural history of the North Central Texas region between 1840 and 1910, and is intended to portray the historical development in the area of the City of Dallas through the use of structures of architectural significance and associated furnishings; and

WHEREAS, the Museum shall be open and accessible to the general public as

WHEREAS, the Museum shall be open and accessible to the general public as provided herein for cultural, educational, recreational and civic purposes; and

WHEREAS, it is the desire of the City to cooperate with the Society in such a worthwhile civic enterprise;

NOW, THEREFORE, for and in consideration of the cultural and educational services made available to the City by the Society and the covenants of the parties each to the other hereinafter contained, the parties agree as follows:

#### 1. PRIOR CONTRACT.

The contract dated October 5, 1983 (the "Prior Contract"), by and between the City and the Society is hereby terminated, and the future rights and obligations of the parties shall be governed by the terms of this Agreement. Any liabilities, however, arising out of the Prior Contract shall survive termination and shall be governed by the terms of the Prior Contract.

#### 2. OPERATION AND MANAGEMENT OF PREMISES

A. EXCLUSIVE RIGHTS. The City and the Society hereby agree that the Society shall have the exclusive right to manage and operate the property known as Old City Park, described in Exhibit "A" attached hereto and made a part hereof for the purpose of providing a first class public museum for the benefit of the citizens of Dallas. Old City Park is sometimes referred to herein as the "Premises."

B. TERM. The term of this Agreement shall commence on the Effective Date and shall continue thereafter for twenty (20) years and two (2) extensions of five (5) years each (the "Agreement Term"), subject to the rights of early termination, in whole or in part, as set forth in Sections 19.0, 20.0 and 25.0 hereafter.

#### 3. HOLDING OVER.

Should the Society, or any of its permitted successors-in-interest, continue its use of the Premises or any part thereof after the expiration of the Agreement Term, unless otherwise agreed to in writing, such use shall constitute and be construed as a tenancy from month-to-month.

#### 4. USE BY THIRD-PARTIES.

The City shall have no right to lease or in any way grant any right to a third party to occupy the Premises without the prior written consent of the Society. Subject to the provisions of this Agreement, the Society reserves the right to contract (whether by sublease or otherwise) for the use of certain of its facilities to third parties for the operation of gift shops, concessions, restaurants, and other uses falling within the stated mission of the Society for terms of one (1) year or less. Such

contracts for terms in excess of one year, however, shall require the City's prior written consent. The Society may rent portions of the grounds, the historic structures and auxiliary structures for single, short term events at such rates as have been approved in advance by the Office of Cultural Affairs. The Society will continue to be allowed to provide concessions services in all indoor and outdoor areas of Old City Park.

#### 5. FUNDS.

A. USE OF REVENUES. The Society shall accumulate funds resulting from the revenues it generates from classes, programs, activities, food service vending, the museum gift shop, rentals, endowments, general admissions, and special exhibition admissions, and such funds shall be used to assist with the operation of Old City Park for the benefit of the public. The Society shall not be required, however, to pay the City for its use of the Premises, nor contribute any funds toward the payment of utilities and security beyond the boundaries of Society property as listed in the Master Plan (roughly bounded by Harwood Street on the east, Ervay Street on the west, Beaumont Street on the south and the eastbound access road of I-30 on the north). All revenues generated from the Society's use of the Premises shall remain the property of the Society, to be expended in accordance with this Agreement.

B. ENDOWMENT FUND. The Society shall maintain an operating endowment fund and shall also use its best efforts to raise contributions from year to year in order to augment such endowment. Earnings shall be used for the benefit of the Society's operations. The City acknowledges that the Society has full legal title to all endowment funds and will at all times remain the property of same.

#### 6. TITLE TO BUILDINGS AND FIXTURES.

The City represents and the Society acknowledges without reservation that the City has legal title to Old City Park dedicated or deeded real property upon which same is located. Upon expiration of this Agreement, the Society shall retain any furnishings, exhibits, food service and gift shop resale items, inventory appliances, tools, machinery, raw materials, and other tangible personal property either purchased by or donated to the Society. Collections, equipment, and other items which have been donated or deeded to or purchased by the City will remain the possession of the City. This provision, however, shall not apply to materials and/or objects on loan or items temporarily used in connection with exhibitions that will be removed following such exhibitions, which personalty shall remain the property of its lawful owner.

#### 7. PUBLIC ACCESS AND ADMISSION FEES.

The parties hereto agree that the Premises and all exhibits and collections shall remain open and be accessible to the public at all reasonable times. The Society

shall have the right to charge admission fees for special events in accordance with a fee schedule which shall be approved by the Office of Cultural Affairs. In addition, the Society shall have the right to charge gate fees during the course of daily operations in accordance with a fee schedule, to include time of free admission, which shall be approved by the Office of Cultural Affairs. It is expressly understood and agreed that all revenues from admission fees shall be applied by the Society toward the operations of the Premises.

#### 8. EVENTS SCHEDULING.

A. OTHER EVENTS. The City shall give the Society prior written notice of each event or events outside or near Old City Park that could adversely impact the operation of the Society. The City shall make a reasonably good faith effort to provide such notice at least thirty (30) days prior to each event, provided however, neither failure to send written notice nor the act of scheduling special or ad hoc events outside or near Old City Park shall subject the City to any liability. In addition, the Society may operate its facility seven days a week and on holidays.

B. CITY SCHEDULING. The City has no right to schedule events at Old City Park without the prior consent of the Society. Such consent will not be unreasonably withheld.

#### 9. DEVELOPMENT AND OPERATION.

A. MASTER PLAN The Park Board and the Society have developed and approved a Master Plan for the development of Old City Park. Any and all proposed changes to the Master Plan will be submitted to the Park Department staff. Staff will assess the proposed changes and determine whether the changes invoke the Park Department's approved Master Plan Process. If so, said changes will be done in accordance with the Master Plan process.

B. MAINTENANCE BY CITY. In addition to other obligations undertaken by the City under this Agreement, the City agrees, subject to annual City Council appropriation, to provide funding in its departmental budgets for the following items for Old City Park:

(1) Structural maintenance and repairs of buildings, building systems and future improvements comprising the premises (excluding telephone systems and janitorial services). The Society shall provide these services using funds allocated through the annual Cultural Services Agreement between the Society and the City;

(2) Design and maintenance of all landscaping, including planting and clean-up of the grounds, to include cleaning of storm sewers, flood damage, property upkeep, and any reasonable safety provisions during inclement weather (e.g., sanding, snow removal). Park Department maintenance

commitment shall, subject to annual City Council appropriation, be consistent with service levels provided upon effective date of contract as more particularly described in Exhibit B. Any expanded maintenance beyond this basic level shall be negotiated on a case by case basis.

(3) Subject to availability of funds, the City shall provide water lines, sewer lines, sanitary sewer trunk lines (excluding laterals to specific structures); provide or arrange for a source of electric service, including general illumination of the Park area; and provide off-street parking areas and appurtenances such as drives and drainage structures, in keeping with the Master Plan.

C. UTILITY SERVICES. The City shall pay the cost of electric, gas, sewer, waste disposal, and water utility services to the Premises.

D. PROPERTY INSURANCE. The City shall maintain in full force and effect during the continuance of this Agreement, all-risk property insurance, covering the buildings on the Premises in amounts equal to the full replacement cost thereof. The Society shall cooperate with the City's insurer on all matters, including but not limited to, facility inspections and loss adjustments. Personal property insurance shall be the responsibility of the Society. In the event that the buildings on the Premises shall suffer damage or destruction that exceeds the insurance deductible, the City shall cause same to be repaired or rebuilt to the extent allowable from the proceeds of insurance. To the extent of the dollar value of the deductible stated in the City's insurance policy covering such loss, however, and for the purposes hereof, the City shall be considered self-insured and shall be responsible for the repair or replacement cost of any loss excluded from such insurance coverage by reason of such deductible amount. Proceeds of personal property insurance shall be used, to the extent available, to replace any personal property which has been destroyed and which is located within the Premises and owned by the City.

E. DIRECT SUPPORT. Direct payments, if any, to the Society shall be made pursuant to its annual Cultural Services Agreement with the City, following City Council approval. All other necessary operating expenses of the Society (excluding those paid by the City under this Agreement) shall be paid by the Society. In addition, the Society from time to time may apply to the Office of Cultural Affairs for additional service contracts for programs or special projects, all in accordance with the City's established policy for procurement of services from cultural organizations, as such policy may exist from time to time. The parties agree, however, that the level of payment authorized by the annual Cultural Services Agreement is solely within the discretion of the City Council.

F. SECURITY. Both the City and the Society acknowledge that security at Old City Park, of visitors, employees and facilities, is a critical issue for the success of the Society. The City shall, subject to availability of funds, continue to provide

funds through the annual Cultural Services Agreement for specific use toward a full time private security guard at Old City Park.

G. DISPLAY BUILDINGS. Subject to the provisions of this Contract, the Society shall perform the following:

- (1) The Society shall select the buildings which are to be relocated or constructed to develop the Museum in accordance with the Master Plan and submit such selections to the City for approval prior to any relocation or construction.
- (2) The Society shall employ the services of an architect as needed for the preparation of architectural plans and specifications for such buildings and/or their relocation.
- (3) Upon approval by the Office of Cultural Affairs and the Park and Recreation Board, the Society shall relocate or construct such buildings and improvements in accordance with the terms of Section 12 (C) through 12 (E)
- (4) The Society shall staff and operate the Museum and provide telephone service at its own cost.
- (5) The Society shall provide janitorial services for buildings, structures and improvements and shall also provide supplies, tools, materials and equipment necessary to maintain its exhibits and improvements.
- (6) The Society shall design and conduct educational programs for the facility.
- (7) The Society, using funds provided in its annual Cultural Services Agreement with the City, shall make necessary cosmetic and structural repairs to the historic structures.

#### 10. FURNISHINGS.

A. COLLECTIONS. The Society acknowledges its responsibility to furnish all buildings and structures in the Museum in accordance with accepted professional standards, its historical interpretation of the buildings and structures and in accordance with the theme of the Museum. The Society shall, from time to time, upgrade the collections when items and money are available, or through the sale or exchange of items in its collections, its holdings and furnishings, to provide a high quality educational facility in keeping with the theme of the Museum.

B. CARE. The Society, at its expense, will be responsible for the preservation, conservation, repair and maintenance of its furnishings on display at the Museum or in storage.

C. PROTECTION. The Society shall insure its furnishings located in and about the structures and buildings at Museum at a value not less than eighty percent (80%) of the estimated value, with the exception that upon mutual agreement between the Society and the City, the Society may become self-insuring for the protection of its collections located at the Museum.

#### 11. CONTROLS AND APPROVALS.

Prior to the relocation and/or construction of any buildings or structures at Old City Park, approval shall be obtained from the Office of Cultural Affairs and the Park and Recreation Board. Such buildings and structures shall conform with the Master Plan and all furnishings, decorations and appointments must be within the philosophical framework of the Museum. Museum development through restoration of historic structures does not preclude the Society's ability, in accordance with the Master Plan, of constructing facilities which enhance the Society's ability to further carry out its mission

#### 12. RECONSTRUCTION OF THE MUSEUM.

A. TRANSFER OF TITLE. The Society stipulates and agrees that all of its rights, title and interests whatsoever to the structures in Old City Park have passed from the Society and vested in the City, without reservation. All rights, title and interests whatsoever to any other structure placed on Old City Park by the Society shall pass from the Society and vest in the City after the construction or reconstruction phase of such structure has been completed, and at such time as such structure has been approved and accepted by formal resolution of the Park and Recreation Board and the City Council.

B. DISPLAY SPACE. The City agrees to provide sufficient ground space for structures in accordance with and as shown in the Master Plan.

C. CONSTRUCTION. The Society's contractors shall have the right to select the means and methods of construction, subject to the Director of the Park and Recreation Department and the Building Inspector's right and authority to prohibit means and methods proposed or employed by such Contractor or his subcontractors, which in their judgment:

- (1) will constitute or create a hazard to the project, or to persons or property, or be in violation of the City's Charter, Ordinances, Codes or any of its regulations; or
- (2) will not produce the finished work in accordance with the expressed agreements and understandings by and between the City and the Society.

The City's approval of the Society's contractors' means or methods of

construction, or its failure to exercise the right and authority to prohibit such improper means or methods, shall not relieve the contractor of his obligation to the Society to accomplish the results intended hereunder; nor shall the exercise of such right to prohibit create a cause of action for damages against the City by either the Society or its contractor, or any third party.

D. INSPECTION. The Society agrees to provide in the contracts with its contractors, that during the performance of the construction work and up to the date of final acceptance by the City that its contractors will cooperate with the Park Department's Engineer and with the Building Inspector of the City, and will allow them to observe, inspect or investigate the project site at any time. The Society's contractors will comply with any directive of such officials made in connection with such inspections.

E. RISK OF LOSS. The Society further agrees to include in the contract with its contractors that during the performance of any construction for the location of a structure in the Museum, and up to the date of final acceptance by the City, the contractors shall be under an absolute obligation to protect the structures against any damage or loss. In the event of such damage, loss or injury, the contractors shall promptly replace or repair such work, whichever the Society and the City shall mutually deem to be preferable under the circumstances. The contractors' obligation to deliver the finished structure in strict compliance with the terms of the construction contract with the Society, prior to final acceptance by the City, shall be an absolute and shall not be affected by the City's approval of or failure to prohibit means and methods of construction of the contractors. Contractors must be required to take all reasonable precautions to protect persons and property on or adjacent to the project site from damage, loss or injury resulting from the contractors' or any subcontractor's operations, except such property as the owners thereof may themselves be under a legal duty to protect. The contractors, subcontractors, their agents, servants and employees shall have the duty to provide, place and adequately maintain at or about the project site, sufficient guards (in addition to normal park patrols provided by the City), lights, barricades, enclosures or other means of warning and protection. Should notice of the occurrence of any loss, damage or injury be first received by the contractors or their subcontractors, then in such event, the contractors shall make a full and complete report to the proper officials of both the City and the Society as soon as possible thereafter.

F BONDS. During construction and/or in the removal of the structure from its original location or storage place, and during its transportation to the project site, and during the reconstruction phase, the Society recognizes and agrees that no mechanic's, materialmen's, laborer's, artisans' or other liens against the structure or real estate will be permitted to accrue or be attempted to be fixed thereon in this connection. The Society's contractor shall be required to furnish and maintain in full force and effect during construction a performance bond as security for the faithful performance of his contract with the Society and a payment bond as security for the payment of all persons performing work and furnishing materials in



connection therewith. Each such bond shall be in an amount equal to the contracted considerations to be agreed upon by and between the contractor and the Society and shall inure to the mutual benefit of the Society and the City.

G. INSURANCE DURING CONSTRUCTION. Prior to the start of any construction activities, the Society shall require the construction contractor to procure and maintain insurance coverages as described in Exhibit C.

### 13. PARKING.

The Society will provide adequate parking for daily operations of Old City Park. Special events, due to a higher volume of vehicles, will, at times, spill onto grassy areas on adjacent Society properties. Should daily parking exceed existing space, the Society, in accordance with the Master Plan, will develop expanded paved parking areas.

- (1) The Society may charge for parking on paved lots existing at Old City Park at the execution of this agreement.
- (2) All fees must be approved by the Park and Recreation Board.
- (3) Thirty (30) percent of gross revenues will be submitted to the Park and Recreation Department. The Park and Recreation Department reserves the right to audit funds as it deems necessary.
- (4) Revenues to the Park Department may be used to support maintenance of the grounds at Old City Park (i.e., the current maintenance level).
- (5) The Society may develop parking on society-owned properties and collect fees with no reimbursement to the City.
- (6) Should the Park and Recreation Department develop and construct other parking areas adjacent to areas that are part of the DCHS Master Plan, revenues will be retained by the department with no reimbursement to the Society.
- (7) Revenues generated by parking areas constructed with joint City and Society funds as part of the DCHS Master Plan will be shared, with no less than 30% of the gross proceeds retained by the Dallas Park and Recreation Department. All construction and fees will be mutually agreed to by DCHS and Park and Recreation Board.
- (8) The Park and Recreation Board of the City of Dallas will not be liable for any loss or damage sustained by the Society in the execution of this agreement.

The Society will exercise every reasonable precaution for the safety of the park property and protection of any and all persons and/or property located adjacent to or making passage through said property.

#### 14. CITY RIGHT OF ENTRY.

The City shall have access to the Premises at all times for general visitation and supervision, and for performing the duties devolved upon it by its charter and the ordinances of the City of Dallas and the laws of the State of Texas. The police power and supervision of the City shall extend in and through and to the Premises. The Society may appoint, direct, control, and remove all persons employed within the Premises and in and about the care of same; save and except those persons assigned by the City in the performance of its duties under this Agreement or such duties imposed upon it by the City's charter.

#### 15. SIGNAGE.

The City shall, subject to availability of funding authorized by the City Council, develop and implement directional and locational signs for Old City Park approved by all necessary departments and boards. The City shall continue to develop and implement directional and locational signs for Old City Park, indicating access to Old City Park from primary downtown attractions, major freeways and the immediate neighborhood. In developing sign criteria, the City shall give consideration to all access plans, including access plans developed by the Society.

#### 16. DEFAULT BY DALLAS COUNTY HERITAGE SOCIETY.

Failure to comply with any term, condition, or covenant of this Agreement by either the Society or the City shall constitute an event of default.

A. NOTICE AND OPPORTUNITY TO CURE. The City shall give the Society written notice of any default by the Society. Such notice shall specify what action or lack thereof has led to the Society's default. The Society shall have ninety (90) days following its receipt of any such notice in which to cure the default (the "Cure Period"). If said default cannot be cured within said Cure Period, provided the Society has, with reasonable diligence and good faith, attempted to cure same, the Cure Period shall be extended as needed to permit the Society to cure said default, provided that the Society continues to attempt said cure with due diligence and in good faith. Should the Society fail to cure any default within the Cure Period, the City may pursue its remedies as set forth in this Agreement. Notwithstanding the foregoing, upon receipt of any written notice of default, the Society may (but shall not be obligated to) request a hearing before the City Manager. Such request shall be granted if the Society files such request promptly with the Director of the Office of Cultural Affairs. From any written order of the City Manager issued after any such hearing, but not otherwise, the Society may, within fifteen (15) days of receipt of written notice, ask the City Council to review the subject matter of the controversy

and the City Council in its discretion may pass on the matter or grant a hearing thereon. The decision of the City Council shall be final and binding. Wrongful failure or refusal of the Society to comply with any such order of the City Manager, if the same be not reversed by the City Council, shall authorize the City to terminate this Agreement and assume full control of the Premises.

B. CITY'S REMEDIES FOR DEFAULT. If the Society defaults hereunder, fails to cure any such default within the Cure Period, and upon conclusion of the review procedure set forth above, the City shall have the option to pursue any one or more of the following remedies:

(1) The City and the Society may terminate this Agreement upon thirty (30) days written notice. The Society shall vacate the Premises on or before the thirtieth (30th) day following the date of such notice. If the Society fails to so vacate, the City may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Premises and expel or remove the Society and any other person who may be occupying the Premises or any part thereof, except by use of force. Should the City be forced to remove the Society or its personalty from the Premises, excluding property owned or leased by third parties, any personalty so removed shall be handled with due care and shall be stored by the City within a secure storage facility at the Society's expense.

(2) Should the Society refuse to vacate the Premises in accordance with (1) above and if the City is unable to obtain possession of the Premises by a means other than the use of force, the City may pursue such other remedies as are provided to it by statute, by law or in equity.

#### 17. REPRESENTATIVES NOTICES.

A. AUTHORIZED REPRESENTATIVES. This Agreement shall be administered on behalf of the City by the Office of Cultural Affairs, and on behalf of the Society by its duly authorized officials; provided, however, that for the construction of the Improvements, the Director of the Park and Recreation Department shall represent the City. To the extent necessary to comply with the City's obligations under this Agreement, other City departments may perform such obligations. All rights, powers, privileges, immunities, and duties of the City under this Agreement, including, but not limited to, any notices required or permitted to be delivered by the City to the Society hereunder, may, at the City's option, be exercised or performed by the City's authorized agent or attorney. As to all matters where consent of the City is required herein, such consent shall be provided by the Director of the Office of Cultural Affairs or the Director of the Park and Recreation Department as appropriate.

B. NOTICES. Any notices required to be given under this Agreement shall be in writing and shall be hand delivered and addressed to the parties as

follows:

If to the City:

Director, Office of Cultural Affairs  
1925 Elm Street, Suite 500  
Dallas, Texas 75201

Director  
Park and Recreation Department  
City of Dallas  
City Hall, 6FN  
1500 Marilla Street  
Dallas, Texas 75201

If to the Society:

President, Old City Park  
1717 Gano  
Dallas, Texas 75215

18. DALLAS COUNTY HERITAGE SOCIETY RESPONSIBILITIES.

A. ACCEPTANCE OF PREMISES. The Society acknowledges that it has fully inspected the Premises and hereby accepts the Premises as is, where is, with all faults and without any warranties, express or implied, and the Society accepts the Premises as suitable in their present condition for the purposes for which the Society intends to use same. The Society is familiar with State law procedural requirements concerning the use, management and ownership of park and recreation property. As such, the Society hereby waives any obligation or responsibility of the City to follow such procedures in connection with the City's entering into, and compliance with, this Agreement. Further, the Society waives any procedural irregularities in connection with the authorization of this Agreement by the City.

B. USE OF PREMISES; PROGRAM CONTROL. The Society may transfer to and place and arrange in the Premises all of its collections and exhibits and shall have and enjoy the exclusive use of the whole of said Premises, subject to the provisions of this Agreement, during the Agreement Term or until the termination of this Agreement as herein provided. All decisions concerning exhibits and programs, including without limitation, the content, scope, cost, duration and method of presentation of such exhibits and programs shall be within the sole discretion and control of the Society.

C. COMPLIANCE WITH LAWS. The Society agrees that in the

performance of its undertakings under this Agreement, it will strictly observe and abide by the ordinances of the City of Dallas, the laws of the State of Texas and of the United States of America as the same now exist or as the same may hereafter be amended or any new ordinances or laws which may be enacted. The Society shall observe and abide by the highest principles of civic responsibility to the end that neither public funds nor public property shall be used in any manner which is inimical to public confidence in the administration of the City.

D. ELECTION OF DIRECTORS. It is stipulated and agreed by the Society that said organization, through its president, utilizes and manages property owned by the City. The Society hereby expressly agrees to exercise appropriate care, prudence, and diligence in the solicitation of members and the election of directors for the purpose of assuring broad community representation and participation in its programs and the promotion of the Society, and to act always in accordance with community goals and in the highest public interest. The Society agrees that, in making appointments to the Board of Directors, it will take into consideration both the ethnic and geographical composition of the city. Further, the Society hereby expressly agrees to supply, on an annual basis, the names of those persons selected as directors of the Society to the Director of Cultural Affairs for filing as a public record.

E. CHARTER AND BY-LAWS. The Society shall file a true and correct copy of its corporate charter, with amendments, if any, and an accurate and complete copy of its by-laws and any amendments thereto (collectively, the "Corporate Documents") with the Director of Cultural Affairs. The Corporate Documents shall be maintained by the Office of Cultural Affairs as a public record available for inspection by any person upon request during normal business hours. In the event of subsequent amendments to said Corporate Documents, true and correct copies of the same shall be timely filed with the Office of Cultural Affairs.

F. NON-DISCRIMINATION. During the period of this Agreement, the Society agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, age, handicap, or national origin; nor shall any person be denied admittance nor be prevented from participating in any portion of any public function or activity at the Premises because of race, creed, color, sex, religion, age, handicap, or national origin.

G. ABATEMENT OF NUISANCES. The Society shall promptly comply with all governmental orders and directives for the correction, prevention, and abatement of nuisances caused by the Society, its activities, its officers, agents, or employees, in or upon or connected with the Premises, and shall pay for any costs of such compliance.

H. REPORTS AND PROPOSED OPERATING BUDGETS. The Society shall submit annually to the Office of Cultural Affairs a proposal for services which shall be assembled in the format required by the Office of Cultural Affairs, and which shall reflect the income and expenditures for the past fiscal year and proposed

expenditures for the next fiscal year. The proposal shall be submitted in complete and final form not later than the annual date set by the Office of Cultural Affairs. The City Manager, with the advice of the Director of the Office of Cultural Affairs and the Cultural Affairs Commission, may recommend to the City Council from year to year that funds be included in the proposed budget of the Office of Cultural Affairs for procurement of services from the Society in operating a History Museum and related facilities (the City acknowledges that it has historically provided such direct payments through the Cultural Services Agreements with the Society). Any payments for such services shall be provided on a monthly reimbursement basis following submission of monthly expenditure reports by the Society to the Office of Cultural Affairs. In no instance shall the cumulative payments for any twelve (12) month period exceed the total of the Society's service contract amount as authorized by the City Council, in its sole discretion. The Society shall provide the Office of Cultural Affairs with such reports as it may request from time to time concerning its operations. At a minimum, the following reports shall be required:

- (1) An annual audit prepared by an independent certified public accounting firm, which shall include, but not be limited to, financial reports relative to the income, expense, assets, liabilities and financial stability of the Society, and other reports as may be customarily available with such audits, and
- (2) Any other reports as may reasonably be required.

I. INSURANCE AND INDEMNITY. Society shall procure and maintain during the term of this Agreement the minimum insurance coverages contained in Exhibit D.

#### 19. ACKNOWLEDGEMENTS IN PRINTED MATERIALS.

Society agrees to acknowledge the City for its support in all appropriate printed materials. The City reserves the right to approve, in whole or in part, the form of such acknowledgements which the Society proposes to include in any printed materials.

#### 20. AFFIRMATIVE ACTION.

The Society shall agree to develop, implement and maintain an affirmative operational policy, consistent with the City's affirmative action goals, to ensure accessibility of the Society's operations to all citizens of Dallas.

#### 21. CONFLICT OF INTEREST OF CITY EMPLOYEES.

The following section of the Charter of the City of Dallas shall be one of the conditions of, and a part of, the consideration of this Agreement, to-wit:

"Chapter XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED - No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office, or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

The alleged violations of this section shall be matters to be determined either by the Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.

The provisions of this section shall not apply to the participation by City employees in federally funded housing programs to the extent permitted by applicable federal or state law.

## 22. GIFT TO PUBLIC SERVANT.

(1) The City may terminate this Agreement immediately if the Society has offered, conferred, or agreed to confer any benefit on a City employee or official that the City employee is prohibited by law from accepting. (The City has been advised by the prosecuting authorities that the Section 36.10(4) exception to Sections 36.08 and 36.09 of the Texas Penal Code is not available to public servants who have no legal reporting requirements.)

(2) For purposes of this Section, "benefit" means anything reasonably regarded as economic gain and economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

(3) Notwithstanding any other legal remedies, the City may require the Society to remove any employee of the Society who has violated the restrictions of this section or similar state or federal law, and obtain reimbursement for any expenditures made to the Society as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

## 23. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in this Agreement, their assigns. Neither the Society, nor its successors or assigns, shall

mortgage or otherwise encumber any leasehold rights created hereunder.

24. APPLICABLE LAWS.

This Agreement is made subject to the Charter and ordinances of the City, as amended, and all applicable laws of the State of Texas. This Agreement shall be construed under and governed by the laws and court decisions of the State of Texas.

25. NO PARTNERSHIP; NO AGENCY RELATIONSHIP.

Nothing contained in this Agreement shall be deemed to constitute the City and the Society partners or joint venturers with each other. Further, nothing contained in this Agreement is intended, nor shall it be construed, to create the relationship of principal and agent or to create any fiduciary obligations between the City and the Society.

26. NO WAIVERS.

No waiver by the City or the Society or any default or breach of any term, covenant, or condition of this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other terms, covenant, or condition of this Agreement.

27. FORCE MAJEURE.

If (a) the Premises or any portion thereof are destroyed or damaged by fire or other calamity so as to prevent the use of the Premises for the purposes and during the periods specified in this Agreement, or (b) the use of the Premises by the Society is, in whole or in part, prevented by act of God, strike, lockout, material or labor restrictions by any governmental authority, civil riot, flood, or any other cause beyond the control of the City, the parties hereto shall be excused from performance hereunder for such period of time as is reasonably necessary after such occurrence until the condition preventing such use has passed or been remedied.

28. VENUE.

The obligations of the parties under this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas.

29. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws and court decision of the State of Texas.



30. LEGAL CONSTRUCTION.

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

31. CAPTIONS.

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

32. AMENDMENT.

This Agreement may not be amended or altered except by an instrument in writing executed by all the parties hereto.

EXECUTED this 15<sup>th</sup> day of August, A.D. 1994, as authorized by City Council, to be effective as of the date first written above.

APPROVED AS TO FORM  
SAM LINDSEY, CITY ATTORNEY

CITY OF DALLAS  
JOHN WARE, CITY MANAGER

BY:

Jim Ketchum  
(JK)

BY:

[Signature]

ATTEST:

PARK AND RECREATION BOARD  
OF THE CITY OF DALLAS

BY:

Geneva L. Mumford

BY:

[Signature]

ATTEST:

DALLAS COUNTY HERITAGE SOCIETY  
d/b/a OLD CITY PARK

By:

[Signature]  
Corporate Secretary

By:

[Signature]  
President