EXHIBIT D

Resolution No. 93- 2083
May 26, 1993

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 1st 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

BY: Jim Ketchersid

ATTEST:

BY: Geneva L. Mumhead

CITY OF DALLAS
JOHN WARE, CITY MANAGER

BY: [signature]

PARK AND RECREATION BOARD
OF THE CITY OF DALLAS

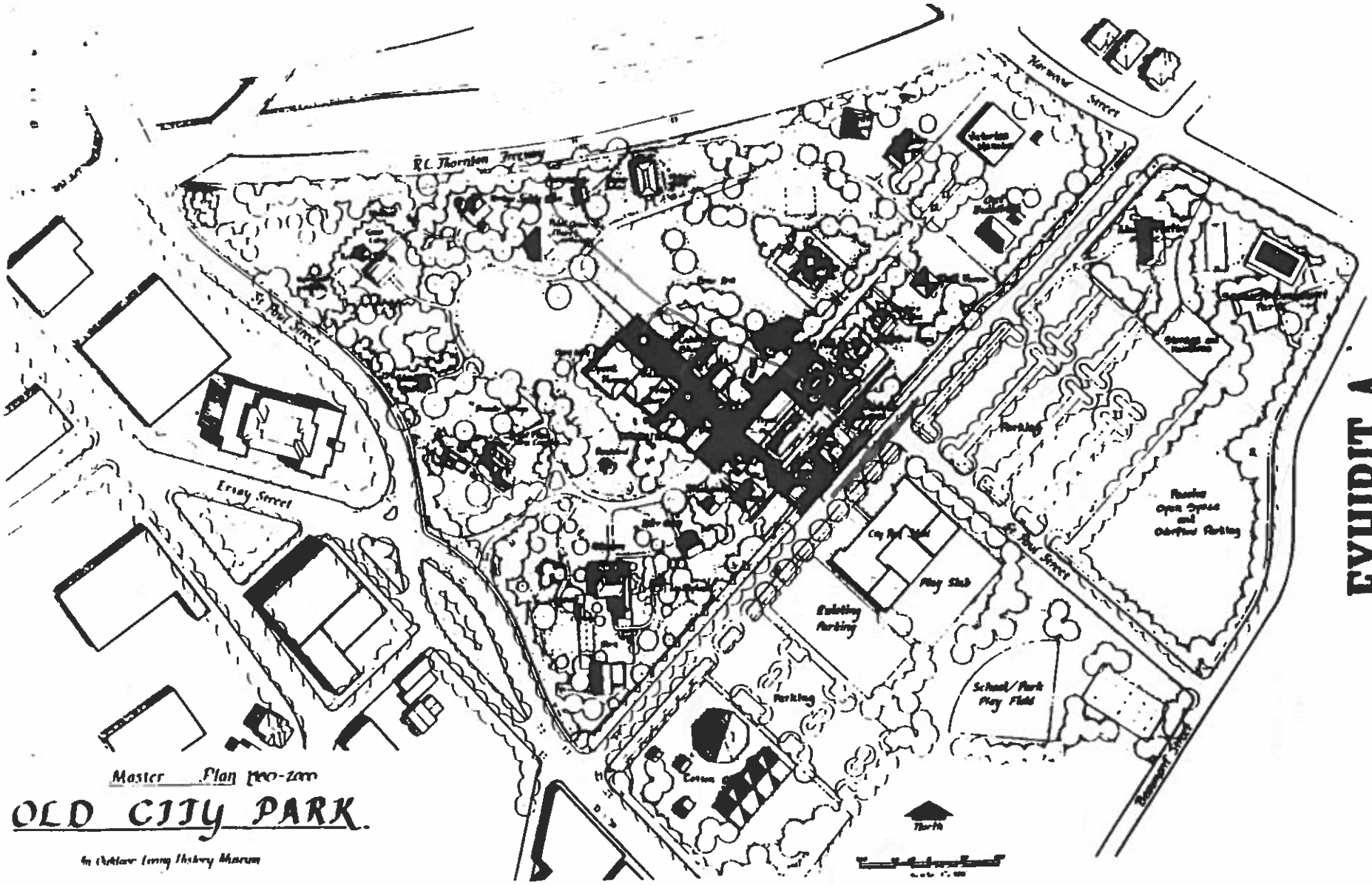
BY: [signature]

ATTEST:

By: [signature]
Corporate Secretary

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

By: [signature]
President



Master Plan 1990-2000

OLD CITY PARK

In Outlaw Army History Museum

EXHIBIT A

Memorandum

CITY OF DALLAS

DATE July 8, 1993

TO Ralph Mendez

SUBJECT Responsibilities at Old City Park

The following information is a summation of District III's responsibilities at Old City Park.

CARETAKER

1 - Park Keeper 6 (Caretaker) 27.5 hrs. weekly

MOW\TRIM CREW

1 - Park Keeper 6 4.0 hrs. weekly
1 - Park Keeper 5
2 - Day laborers

PARKMASTER

1 - Park Keeper 6 2.0 hrs. weekly

72" TRACTOR

1 - Park Keeper 6 3.0 hrs. weekly

IRRIGATION

1 - Irrigation Technician 8 2.0 hrs. weekly
1 - Park Keeper 5

HORTICULTURE

1 - Park Keeper 6 40.0 hrs. yearly
1 - Park Keeper 4

PARK FURNITURE REPAIR

1 - Park Keeper 6 32.0 hrs. yearly
1 - Park Keeper 5

EXHIBIT B

FORESTRY

2 - Park Keeper 6	32.0 hrs. yearly
1 - Day labor	

SPECIAL EVENTS

2 - Park Keeper 6	18.0 hrs. yearly
2 - Park Keeper 5	

The total worker hours per year would be 2,834. If any further information is needed please contact me at 670-7635.

Richard Lyon

Richard Lyon
Park Maintenance Supervisor
East Region, District III

jlh

cc J. B. Gassaway
file

EXHIBIT C

CONSTRUCTION INSURANCE & INDEMNIFICATION

SECTION A. Prior to the commencement of construction, CONTRACTOR shall furnish a completed Insurance Certificate to the City's Director's Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE DIRECTOR'S OFFICE, and no officer or employee shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

SECTION C. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amounts:

1.	**Workers' Compensation** and **Employers Liability**	Statutory $100,000/500,000/100,000
2.	**Commercial General (public) Liability** insurance including coverage for the following: a. Premises/Operations b. Independent contractors c. Products/completed operations d. Personal & Advertising Injury e. Contractual liability f. Medical payments g. CITY'S property in CONTRACTOR'S care, custody, or control h. Explosion, underground & collapse hazards i. Amendment of Aggregate	Combined single limit for bodily injury and property damage of $1,000,000 per occurrence or its equivalent

	Limit per Project (CG2503)	
3.	**Comprehensive Automobile Liability** insurance, including coverage for loading and unloading hazards, for: a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined single limit for bodily injury and property damage of $1,000,000 occurrence or its equivalent
4.	**All-Risk Builders Risk or Installation Floater** covering the building(s), additions, renovations and any other construction. Coverage to include but not limited to perils of fire, extended coverage, vandalism & transit City shall be Loss Payee	100% of the replacement costs of the defined property

ADDITIONAL POLICY CONDITIONS

CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for 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 of such policies). Upon such request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

a. Name the Society and the City of Dallas and its officers, employees, and elected representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;
b. Provide for 30 days notice to CITY for cancellation, nonrenewal, or material change; notice to be mailed to CITY at the two addresses shown below by registered mail;
c. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where CITY is an additional insured shown on the policy;

d. CONTRACTOR agrees to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage, or any other loss;

e. Provide that all provisions of this contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

CONTRACTOR shall notify CITY in the event of any changes in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following addresses:

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

Director of Risk Management
City of Dallas
1500 Marilla, 1C-North
Dallas, Texas 75201

SECTION D. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONTRACTOR shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.

INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgements, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of this contract, or by any other negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents, or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and CITY, responsibility, and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without 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 paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

EXHIBIT D

INSURANCE

SECTION A. Prior to the approval of this contract by the City, SOCIETY shall furnish a completed Insurance Certificate to the City's Director's Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY SHALL HAVE NO DUTY TO PAY OR PERFORM THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE DIRECTOR'S OFFICE, and no officer or employee shall have authority to waive this requirement.

INSURANCE COVERAGE REQUIRED

SECTION B. CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions, or the claims history of the industry as well as the SOCIETY.

SECTION C. Subject to SOCIETY'S right to maintain reasonable deductibles in such amounts as are approved by CITY, SOCIETY shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at SOCIETY'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to CITY, in the following type(s) and amounts:

1.	**Workers' Compensation**	Statutory
	and	
	Employers Liability	$100,000/500,000/100,000
2.	**Commercial General (public) Liability** insurance including coverage for the following:	Combined single limit for bodily injury and property damage of $2,000,000 per occurrence or its equivalent
	a. Premises/operations	
	b. Independent contractors	
	c. Products/completed operations	
	d. Personal injury and advertising injury	
	e. Contractual liability	
	f. Medical payments	
	g. Fire legal liability (only if occupying a	$250,000

city-owned facility)

3.	**Comprehensive Automobile Liability** insurance, including coverage for loading and unloading hazards, for: a. Owned/leased vehicles b. Non-owned vehicles c. Hired vehicles	Combined single limit for bodily injury and property damage of $600,000 per occurrence or its equivalent
4.	Property Insurance to include coverage for all of Society's owned property and all non-owned property if required by agreement to insure	All-risk coverage written for a minimum of 100% of the defined property's replacement cost
5.	IF alcoholic beverages are sold, given, dispensed or otherwise made available to the Public by the Society or for the Society:	
	Liquor Liability insurance	$1,000,000 each common cause
6.	If valet parking is provided by the Society: Garagekeepers Legal Liability	$100,000 limit

ADDITIONAL POLICY CONDITIONS

CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for 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 of such policies). Upon such request by CITY, SOCIETY shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

REQUIRED PROVISIONS

SOCIETY agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

a. Name the City of Dallas and its officers, employees, and elected

representatives as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;

b. Provide for 30 days notice to CITY for cancellation nonrenewal,or material change at the two addresses shown below by registered mail;

c. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Dallas where CITY is an additional insured shown on the policy;

d. SOCIETY agrees to waive subrogation against the City of Dallas, its officers and employees for injuries, including death, property damage, or any other loss;

e. Provide that all provisions of this contract concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

NOTICES

SOCIETY shall notify CITY in the event of any changes in coverage and shall give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to CITY at the following addresses:

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Director of Risk Management
City of Dallas
1500 Marilla, 1C-North
Dallas, Texas 75201

SECTION D. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the SOCIETY shall not relieve the SOCIETY of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the SOCIETY from liability.

INDEMNITY

SOCIETY agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgements, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by SOCIETY'S breach of any of the terms or provisions of this contract, or by any other negligent or strictly liable act or omission of SOCIETY, its officers, agents, employees, or subcontractors, in the performance of

this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents, or employees and in the event of joint and concurrent negligence or fault of SOCIETY and CITY, responsibility, and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without 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 paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

COUNCIL CHAMBER
May 26, 1993
932083

DALLAS COUNTY HERITAGE SOCIETY
CONTRACT AGREEMENT

WHEREAS, the Dallas County Heritage Society ("Society") is organized to promote and foster the preservation of the architecture, history and culture of Texas, and particularly of the North Central portion of the state; and

WHEREAS, the City of the Dallas 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, the City and the Society desire to develop in Old City Park, or any expansion thereof, a museum of the architecture and cultural history of the North Central Texas region between 1840 and 1910; and

WHEREAS, the museum shall be open and accessible to the general public for cultural, educational, recreational and civic purposes; and

WHEREAS, it is appropriate to renew the contract with the Society for the operation of Old City Park, and to clarify the City's funding obligation for the support of operating and maintenance costs. Now, Therefore:

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the proposed contract between the City and the Dallas County Heritage Society for operation of Old City Park as an historical museum be approved for a term of twenty years, with two, five year renewal options.

SECTION 2. That the City Manager and President of the Park and Recreation Board be authorized to execute the contract after approval as to form by the City Attorney.

SECTION 3. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

Fax-It™ brand fax transmittal memo 7671	# of pages ▸ 1
Jan Ketchersid	From Phil Jones
City Attorney's Off	Co. Cultural Affairs
	Phone # 670-4078
X3515	Fax # 670-1404

APPROVED BY
CITY COUNCIL

MAY 26 1993

City Secretary

APPROVED Philip Jones
HEAD OF DEPARTMENT

APPROVED
DIRECTOR OF FINANCE

APPROVED
CITY MANAGER

S/N 765-055-000

SUP-00000A

file - Dallas Hts Village/Old City Pk multi-yr agreement (red file)

STATE OF TEXAS	§	SUPPLEMENTAL AGREEMENT NO. 1
	§	TO MANAGEMENT AND OPERATION
COUNTY OF DALLAS	§	AGREEMENT FOR OLD CITY PARK

THIS SUPPLEMENTAL AGREEMENT NO. 1 to that certain Contract, dated May 26, 1993 ("the Agreement"), by and between the CITY OF DALLAS, a Texas municipal corporation, hereinafter called "City," and DALLAS COUNTY HERITAGE SOCIETY, d/b/a Old City Park, a Texas non-profit corporation, with offices at 1515 South Harwood, Dallas, Texas 75215, hereinafter called the "Society," evidences the following:

1. The Contract is amended to add new Section 12A, entitled "EXPANSION OF DALLAS HERITAGE VILLAGE," as follows:

"12A. EXPANSION OF DALLAS HERITAGE VILLAGE

A. DESCRIPTION OF THE PROJECT. The expansion of Dallas Heritage Village (hereinafter called the "Expansion Project"), anticipated to consist of two separate phases, is further described in the Society's Scope of Work letter dated November 1, 2007, attached to and made a part of this Supplemental Agreement No. 1 as Exhibit D. The Society agrees to have the Expansion Project developed in accordance with Exhibit D and the plans and designs approved by the Park and Recreation Board as part of the Master Plan for Old City Park on June 15, 2006.

B. COST PARTICIPATION.

(1) In consideration of the mutual promises, covenants, and conditions agreed to in this Section, City and the Society agree that joint participation in the Expansion Project shall be allocated on a 60% City – 40% Society basis, using the estimated design and construction cost of the Expansion Project. City's participation in the Expansion Project shall be an amount not to exceed $949,688.68, based upon the availability of existing City bond funds. Subject to Subsection F below, the Society's participation shall be in the amount of $649,910.32. The amount of $177,007 in architectural planning, conceptual design, surveying, and civil engineering fees expended by the Society in the course of developing the Expansion Project will be credited against the Society's participation obligation under this Agreement. City's funds shall be solely used to pay for construction of the Expansion Project and for no other purpose.

(2) City shall not be required to fund award of any construction contract for the Expansion Project unless and until the Society can verify in writing that it has on hand in cash in their bank account (or in an appropriate funded loan account), the amount of the Society's required participation under this Agreement, less the amount previously credited to the Society's obligation but subject to Subsection F below. If multiple construction contracts are to be awarded, the amount of the

Society's required participation will be a proportion, on the basis of the ratio of the cost sharing as established in Subsection B(1) above, of the cost of the particular construction contract to be awarded, less amounts previously credited to the Society's obligation but subject to Subsection F below. The Society shall submit its required participation amount to City within ten (10) days after receipt of written notice from City of its intent to award and assign the construction contract or contracts for the Expansion Project.

(3) In regard to the public art work included in Exhibit D, all public art work to be performed in connection with the Expansion Project shall be subject to City's Public Art ordinance, the Cultural Arts Policy, and the review and approval of the artist selection process and public art designs, plans, and specifications by the Directors of the Office of Cultural Affairs and Public Works and Transportation.

C. DESIGN OF THE EXPANSION PROJECT.

(1) The Society agrees to perform, or hire a registered professional architectural, engineering, or other professional consulting firm to perform all architectural or engineering work related to the Expansion Project improvements, including preliminary design, field survey, right-of-way alignment, estimates, construction plans and specifications and environmental assessments, along with other customary architectural and engineering services necessary to meet City's requirements for the Expansion Project (the "Design Work"). All design, architecture, engineering, construction staking, and materials testing shall be the sole responsibility of the Society and may be paid out of the Society's participation obligation. The plans and specifications shall include City's General Conditions of Building Construction, 6/25/07 Edition, as may be modified by special provisions approved by City. The Society agrees to provide City with a copy of the construction plans and specifications in a form acceptable to the City's Director of Public Works and Transportation (the "Director"), so that the City may prepare public bids for each phase or portion of construction of the Expansion Project improvements City is participating in.

(2) All designs, documents, plans, specifications, maps, estimates, reports, information and other related items developed in connection with the Expansion Project improvements shall become the sole property of City, without restriction on future use. The Society, its hired architectural, engineering, or other consulting firms may make copies of such plans and specifications for their files. Neither the Society nor its hired architectural, engineering, or other consulting firms shall have any liability for changes made to or use of the drawings, plans, and specifications, and other documents by other architects, engineers, or consultants subsequent to the completion of the Expansion Project. City shall require that any such change or other use shall be sealed by the subsequent architect, engineer, or consultant making that change or use and shall be appropriately marked to reflect what was changed or modified.

(3) The Society shall be solely responsible for payment of all fees and costs to provide the Design Work for the Expansion Project improvements and may pay such fees and costs out of its participation obligation. The Society shall contractually require any architectural, engineering, or other consulting firm it hires to agree that the firm shall look solely and exclusively to the Society for payment of fees for Design Work and shall make no claim whatsoever against City in connection with the Expansion Project. The Society also agrees that it will cause its architectural, engineering, or other consulting firm to make its design development decisions consistent with the agreed upon scope of the Expansion Project and on the basis of the amount of the City's $949,688.68 funding participation limit. Finally, the Society shall contractually require its architectural, engineering, or other consulting firms to agree, in consideration of the payment of their fee, to convey, transfer and assign, or to cause the firm to convey, transfer and assign, to City, all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights, and all other intellectual property rights acknowledged by law in the Expansion Project designs and other Expansion Project deliverables developed.

D. SOCIETY AS CONSTRUCTION MANAGER.

(1) City shall bid the construction contract for the Expansion Project improvements City is participating in, award the contract to the lowest responsible bidder, and assign the construction contract to the Society, as City's construction manager, for the purposes of inspection, supervision, testing, quality control, approval of shop drawings, utility coordination, obtaining utility clearances from all utility companies, staging and coordinating all utility-related work with the construction contractor, general coordination, and completion of all construction work. The Society may fulfill its construction management obligations under this Subsection by subcontracting with a construction management firm that is experienced and qualified in similar types of projects and is otherwise acceptable to City. City shall look to the Society in its capacity as construction manager to ensure that the Expansion Project improvements are completed in a timely manner, in accordance with the contract documents, including all plans and specifications approved by City.

(2) The Society shall review and certify as correct, following the Expansion Project Manager's review and approval, all monthly and final payment requests and forward same to the Director for review and subsequent processing through the City's Department of Public Works and Transportation with such supporting documentation as the Director may reasonably require. All payments for construction work performed under the construction contract shall be made by City to the construction contractor from the funds appropriated for that purpose. City shall not make any payment under a monthly or final estimate unless the Society has certified, by affidavit sworn to by the corporate official or employee duly authorized to submit same, that the estimate of work completed for the period in question is true and correct to the best of his information and belief, has been measured and verified in accordance with the contract documents, and that

all contract preconditions to payment have been met. City reserves the right to perform inspections, measurements or verifications of the estimates or work quantities as are necessary. Final payment to the construction contractor shall not be made until all preconditions to final payment set forth in the construction contract have been performed, and all Expansion Project improvements have been finally completed (as verified by the Society, the Expansion Project Manager, and the Director) in accordance with the approved contract documents, including the plans and specifications, and acceptance by the Director.

E. TRADITIONAL MANAGEMENT SERVICES; BONDS. In addition to the requirements of subsection D above, the Society shall, following City's assignment of the construction contract, perform the usual and necessary traditional construction management services incident to construction projects of the nature and scope of the Expansion Project. The construction specifications shall further require the contractor to furnish performance and payment bonds executed by the contractor and at least one corporate surety authorized to do business in the State of Texas and having a resident agent in Dallas County, Texas, for delivery of notice and service of process, and complying with the requirements of Chapter 2253, Texas Government Code, as amended. The performance and payment bonds (the "Bonds") shall be in the forms attached hereto, marked Exhibit E, and made a part hereof (the "Bond Forms"), which bonds guarantee the completion of the Expansion Project improvements in accordance with the terms and specifications approved by the City. The Bonds shall name the City and the Society as joint obligees. The Society shall thoroughly inspect the work of the assigned contractor to insure there are no defects and nonconformities in the Expansion Project improvements, without assuming responsibilities for means and methods used by the assigned contractor.

F. CLAIMS AND COST OVERRUNS; UNSPENT FUNDS.

(1) The Society acknowledges and agrees that City's participation obligation on the Expansion Project is absolutely limited to $949,688.68, unless City obtains additional funding for the Expansion Project through a new bond issue approved at an election of City's voters, appropriation of such funding by the City Council, and a future Supplemental Agreement laying out any conditions of additional funding participation by City. All Expansion Project costs and all costs of construction work in excess of the $949,688.68 funding limit will be the sole responsibility of the Society. In addition, the Society shall fully and completely resolve, by litigation or otherwise, any claims (including utility damage and delay claims as a result of utility work) of the assigned contractor or any other person or entity arising out of performance of the Expansion Project construction contract without involving City, and without any reimbursement from City if the funding required to pay the claim would cause the total cost of City's participation to exceed the $949,688.68 funding limit, unless such claim results from a material breach by City in the performance of the terms of Supplemental Agreement No. 1 to this Contract (without waiving any sovereign, governmental immunity of City in that regard) or unless City obtains additional bond funding as described above.

City reserves the right, upon reasonable notice and at City's sole election, to make a reasonable audit of all books, records, accounts, and other data of the assigned contractor and the Society relating to the Expansion Project and the performance of the Expansion Project construction contractor or the Society.

(2) If the bids for construction result in an award that is below the estimated design and construction cost for the Expansion Project, thereby leaving excess City participation funds, the City Council may in its sole discretion allow those excess funds, subject to the not to exceed limit of City funding participation as stated in Subsection B(1), to be used for Society-requested change orders and upgrades related to the Expansion Project.

G. INDEMNITY AND INSURANCE. The Society shall require its hired architectural, engineering, and other consulting firms, including but not limited to any construction manager hired by the Society, to name both the Society and City as additional insureds on each firm's commercial general liability and automobile liability policies. The Society shall also require such firms to provide waivers of subrogation as to both the Society and City. Finally, the Society shall require such firms to indemnify and hold harmless the Society and City from any loss or damage arising out of or occasioned by the negligence or fault of those firms, in a form acceptable to City and in compliance with the express negligence rule established under Texas law.

H. DURING CONSTRUCTION. During construction, the Society shall be responsible for obtaining timely repair, replacement, or correction, to the reasonable satisfaction of City, of all damage caused to City's property or facilities or the property or facilities of other persons in the course of construction of the Expansion Project improvements. The cost of repair, replacement, or correction shall be borne by the Society. The Society may look to the construction contractor, or any construction manager hired by the Society to perform the management of the Expansion Project construction, or other party, as may be found responsible for the damage, to reimburse the Society for or make any such repair, replacement, or correction, but shall not under any circumstances charge City for the costs of such repair, replacement, or correction. Emergency repairs, replacements, or corrections made by City to its property or the property of others shall be reimbursed by the Society to City.

I. FINAL COMPLETION. Upon final completion of all construction and final acceptance by City, fee simple title to the Expansion Project improvements shall vest in and belong to City, free and clear of all liens and encumbrances, subject to the Society's right to use and occupancy pursuant to the terms and conditions of the Contract, as amended. The Society agrees to do nothing before or during construction that would prejudice City's ability to secure clear title to the Expansion Project improvements upon final completion. All rights under construction warranties shall be assigned back to City. In addition, upon final completion the Society shall submit to City at least two sets each of the following as-built record documents, drawings, and specifications for the Expansion Project

("as-builts") in the following formats: (i) CD-ROMs containing the as-builts in PDF format; (ii) CD-ROMs containing the as-builts in AutoCad format; (iii) mylar prints of the as-builts; and (iv) paper prints of the as-builts.

J. MAINTENANCE AND OPERATION AFTER FINAL COMPLETION. The Society shall be responsible for maintaining and operating the Expansion Project after final completion in accordance with and subject to all applicable terms of the Contract, as amended."

2. The Contract is amended to add Paragraph 33 as follows:

"33. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims."

3. All other terms, provisions, conditions, and obligations of the Contract between City and the Society shall remain in full force and effect, and said Contract, as same may have been previously amended, and this Supplemental Agreement No. 1 shall be construed together as a single contractual agreement.

EXECUTED this the 27 day of FEB, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 08-0668, adopted by the City Council on February 27, 2008, and by the Society, acting through its duly authorized officials.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

BY _____
Assistant City Attorney
Submitted to City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY _____
Assistant City Manager

ATTEST:

BY _____
Corporate Secretary

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

BY _____
President

ARCHITEXAS

Architecture, Planning and Historic Preservation, Inc.

EXHIBIT D SCOPE OF WORK LETTER

November 1, 2007

Wade Ellison
Senior Architect
Public Works & Transportation
320 East Jefferson #321
Dallas Texas 75203

Re: Dallas Heritage Village

The following is a scope of work for the Dallas Heritage Village project, Phase I:

1. Power Line Relocation under Gano
    a. Installation of new duct banks under Gano between Harwood and St. Paul Street, transformer and switch gear pad, and manhole access;
    b. Installation of new underground duct banks to future Visitor & Education Center and Theatre;
    c. Provide underground electric, cable and telephone installation;
    d. Removal of all utility existing poles.
2. New Concrete Drive between Harwood & Park Avenue
    a. Relocation of Fire Hydrant at Gano and Park;
    b. Raise all existing manholes to new surface levels;
    c. Install bus drop off curb, paving, sidewalk, and retaining wall;
    d. New Drive between Harwood and Park Avenue.
3. Curb Cuts & Parking Approach
4. Parking Lot
    a. New 90 space concrete parking lot with accessible parking, sidewalks, wheel stops, and landscaping
5. New Plaza
    a. Provide Plaza - 4'x4' concrete pavers on compacted sand bed;
    b. Install Shallow water feature;
    c. Restoration and relocation of existing historic water trough artefact,
    d. Install stone benches.

1907 Marilla Dallas, Texas 75201 Tel 214.748.4561 Fax 214.748.4241

6. South Ervay Maintenance Entry
    a. Provide new delivery entrance off Ervay Street into Park;
    b. Provide a new Electronic Gate with remote access on Park Avenue.
7. Provide Irrigation & Landscaping
8. Install Public Art
9. Provide new asphalt top for Park Avenue

The cost estimate for Phase I is as follows:

Power Line Relocation under Gano		$478,307
New Concrete Drive between Harwood & Park Avenue		$146,921
Curb Cuts & Parking Approach		$ 5,181
Parking Lot		$328,378
New Plaza		$293,708
South Ervay Maintenance Entry		$ 30,274
Irrigation & Landscaping		$ 18,144
Public Art (1.5% of bond)		$ 15,000
New Asphalt top for Park Avenue		$ 26,155
	Subtotal	$1,342,068
	Escalation	$ 80,524
	Construction Total	$1,422,592
Architectural/Engineering Fees Paid to Date		$174,107
Geotech Report		$ 2,900
	Total	**$1,599,599**

Phase II will include:

1. New turn lane, entry signage and landscaping at the Harwood entrance
2. New brick pavers on Park Avenue north of the new Public Plaza
3. New garden in the former Gano Street space between Park and St. Paul
4. New open air Children's Theater
5. New Visitor & Education Center
6. Modifications to the existing wrought iron fence and stone wall to enclose the entire property
7. New signature gate at the Harwood Entrance
8. Site lighting

The construction of Phase II will not be in the bond package and will be bid privately. Phase II construction is estimated at $2,620,000.

THE STATE OF TEXAS §
§ SUPPLEMENTAL AGREEMENT NO. 1
§ TO OLD CITY PARK AGREEMENT
COUNTY OF DALLAS §

THIS SUPPLEMENTAL AGREEMENT No. 1 to that certain Management and Operation Agreement for Old City Park authorized by City Council Resolution Number 93-2083 approved by City Council on May 26, 1993 ("Old City Park Agreement"), is entered into by and between the CITY OF DALLAS, TEXAS, a Texas municipal corporation acting by and through its Park and Recreation Board ("Board"), hereinafter called "CITY", 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 and provided as follows:

WITNESSETH

WHEREAS, City and Society entered into the Old City Park Agreement that was approved by City Council on May 26, 1993, and executed by the parties on August 1, 1994 whereby City authorizes Society to manage, operate, and maintain the municipal park known as "Old City Park", for the public display and operation of the multiple buildings on Old City Park; and

WHEREAS, the term of the Agreement was for a twenty-year period, commencing on August 1, 1994, with two extensions of five years; and

WHEREAS, the parties now desire to exercise the first (5) five-year renewal option commencing on May 26, 2013 and ending on May 26, 2018; and

WHEREAS, the parties also desire to replace the existing B with the new Exhibit B-1, attached to and made a part of this Supplemental Agreement No. 1.

NOW, THEREFORE, for and in consideration of the mutual undertakings herein provided and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed, the parties agree as follows:

1. The parties agree to exercise the first (5) five-year renewal option, commencing on August 1, 2013 and ending on August 1, 2018.

2. Exhibit B of the Old City Park Agreement will be replaced with the new Exhibit B-1, attached hereto and made a part of this Supplemental Agreement No. 1.

3. This Supplemental Agreement No. 1 is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Supplemental

Agreement No. 1 as if written word for word in this Supplemental Agreement No. 1. Society shall fully comply with the requirements of this ordinance as a condition precedent to any claim relating to the Old City Park Agreement and this Supplemental Agreement No. 1, in addition to all other requirements in this Old City Park Agreement and Supplemental Agreement No. 1 related to claims and notice of claims.

4. **Society agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Society's breach of any of the terms or provisions of this Agreement, or by any negligent or strictly liable act or omission of Society, its officers, agents, associates, employees or subconsultants, in the performance of this Supplemental Agreement No. 1; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence or fault of both Society and CITY, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph 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.**

5. As a condition of this Contract, Society covenants that Society will take all necessary actions to insure that, in connection with any operations under this Supplemental Agreement No. 1, Society, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, gender, sexual orientation, military or veteran status, or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Society shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Society shall keep, retain and safeguard all records relating to this Supplemental Agreement No. 1 or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of City, upon request, for purposes of evaluating compliance with this and other provisions of the Supplemental Agreement No. 1.

6. All other terms, provisions, conditions, and obligations of the Old City Park Agreement between the CITY and Society shall remain in full force and effect, and said Old City

Park Agreement, as same may have been previously amended, and this Supplemental Agreement No. 1 shall be construed together as a single contractual agreement.

EXECUTED this the 14th day of February 2013, by the City, signing by and through its City Manager, duly authorized to execute same Administrative Action No. 14-538, approved on 2/14/14, and executed this 14th day of February, 2014, by Society, acting through its duly authorized officials.

APPROVED AS TO FORM:
WARREN M.S. ERNST
CITY ATTORNEY

BY: Christine Emma C.L.
Assistant City Attorney

CITY OF DALLAS
A.C. GONZALEZ,
INTERIM CITY MANAGER

BY: [signature]
Assistant City Manager

ATTEST:

[signature]
Secretary

JJ
PARK AND RECREATION BOARD KB

BY: [signature]
President

DALLAS COUNTY HERITAGE SOCIETY

BY: Melissa Pryor
Melissa Pryor
(Print name and title)
Interim Executive Director

THE STATE OF TEXAS §
§ SUPPLEMENTAL AGREEMENT NO. 1
§ TO OLD CITY PARK AGREEMENT
COUNTY OF DALLAS §

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WITNESSETH

WHEREAS, City and Society entered into the Old City Park Agreement that was approved by City Council on May 26, 1993, and executed by the parties on August 1, 1994 whereby City authorizes Society to manage, operate, and maintain the municipal park known as "Old City Park", for the public display and operation of the multiple buildings on Old City Park; and

WHEREAS, the term of the Agreement was for a twenty-year period, commencing on August 1, 1994, with two extensions of five years; and

WHEREAS, the parties now desire to exercise the first (5) five-year renewal option commencing on May 26, 2013 and ending on May 26, 2018; and

WHEREAS, the parties also desire to replace the existing B with the new Exhibit B-1, attached to and made a part of this Supplemental Agreement No. 1.

NOW, THEREFORE, for and in consideration of the mutual undertakings herein provided and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed, the parties agree as follows:

1. The parties agree to exercise the first (5) five-year renewal option, commencing on August 1, 2013 and ending on August 1, 2018.

2. Exhibit B of the Old City Park Agreement will be replaced with the new Exhibit B-1, attached hereto and made a part of this Supplemental Agreement No. 1.

3. This Supplemental Agreement No. 1 is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Supplemental

Agreement No. 1 as if written word for word in this Supplemental Agreement No. 1. Society shall fully comply with the requirements of this ordinance as a condition precedent to any claim relating to the Old City Park Agreement and this Supplemental Agreement No. 1, in addition to all other requirements in this Old City Park Agreement and Supplemental Agreement No. 1 related to claims and notice of claims.

4. **Society agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Society's breach of any of the terms or provisions of this Agreement, or by any negligent or strictly liable act or omission of Society, its officers, agents, associates, employees or subconsultants, in the performance of this Supplemental Agreement No. 1; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence or fault of both Society and CITY, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph 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.**

5. As a condition of this Contract, Society covenants that Society will take all necessary actions to insure that, in connection with any operations under this Supplemental Agreement No. 1, Society, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, gender, sexual orientation, military or veteran status, or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Society shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Society shall keep, retain and safeguard all records relating to this Supplemental Agreement No. 1 or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of City, upon request, for purposes of evaluating compliance with this and other provisions of the Supplemental Agreement No. 1.

6. All other terms, provisions, conditions, and obligations of the Old City Park Agreement between the CITY and Society shall remain in full force and effect, and said Old City

Park Agreement, as same may have been previously amended, and this Supplemental Agreement No. 1 shall be construed together as a single contractual agreement.

EXECUTED this the 11th day of February 2013, by the City, signing by and through its City Manager, duly authorized to execute same Administrative Action No. 14-5316, approved on 2/11/14, and executed this 14th day of February, 2014, by Society, acting through its duly authorized officials.

APPROVED AS TO FORM:
WARREN M.S. ERNST
CITY ATTORNEY

BY: Christopher Bowers C.L.
Assistant City Attorney

CITY OF DALLAS
A.C. GONZALEZ,
INTERIM CITY MANAGER

BY: [signature]
Assistant City Manager

ATTEST:

Dawn M. Ray
Secretary

J.J.
PARK AND RECREATION BOARD KB

BY: Mary W. Wells
President

DALLAS COUNTY HERITAGE SOCIETY

BY: Melissa Pryor
Melissa Pryor
(Print name and title)
Interim Executive Director