

ORDINANCE

2021-06-10-0440

APPROVING A MANAGEMENT AGREEMENT WITH THE SAN ANTONIO PARKS FOUNDATION FOR OPERATIONS AND MANAGEMENT OF THE JINGU HOUSE AT THE JAPANESE TEA GARDEN. THERE IS NO FISCAL IMPACT ASSOCIATED WITH THIS ORDINANCE.

* * * * *

WHEREAS, in 2005, through a Memorandum of Understanding with the San Antonio Parks Foundation (SAPF), the Japanese Tea Garden underwent a successful renovation and preservation project. SAPF facilitated and funded a master plan for the Japanese Tea Garden, which was approved by the City's Historic Design and Review Commission and adopted by City Council in January 2008; and

WHEREAS, in partnership, the City and SAPF funded the Japanese Tea Garden restoration and opened to the public in Spring 2008; and

WHEREAS, additionally, SAPF raised over \$900,000.00 for the restoration of the Jingu House which is consistent with the approved Japanese Tea Garden Master Plan; and

WHEREAS, on June 1, 2011, the City and SAPF entered into a ten-year License Agreement for the operations and management of the Jingu House including the adjacent patio area, pavilion, and waterfall; and

WHEREAS, the current agreement will expire on May 31, 2021; and

WHEREAS, a new Management Agreement is proposed to commence upon approval and expire on May 31, 2031 with one ten-year extension; and

WHEREAS, in lieu of rent, SAPF shall be responsible for operations and non-structural repair and maintenance of the Jingu House; and

WHEREAS, additionally, SAPF is required to maintain a Capital Repair/Improvement Fund to be used for future improvement projects for the Japanese Tea Garden including the Jingu House; **NOW THEREFORE:**

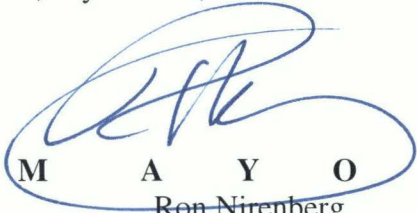
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SW/ah
06/10/2021
Item No. 24

SECTION 1. The City Manager or designee or the Director of the Department of Parks and Recreation or designee, is hereby authorized to execute a Management Agreement with SAPF funded the Japanese Tea Garden. A copy of the Management Agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 10th, day of June, 2021.



M A Y O R
Ron Nirenberg

ATTEST:



Tina J. Flores, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council

June 10, 2021

Item: 24

File Number: 21-2919

Enactment Number:

2021-06-10-0440

Ordinance approving a Management Agreement with the San Antonio Parks Foundation for operations and management of the Jingu House at the Japanese Tea Garden. There is no fiscal impact associated with this ordinance. [David W. McCary, CPM, Assistant City Manager; Homer Garcia III, Director, Parks & Recreation]

Councilmember Jada Andrews-Sullivan made a motion to approve. Councilmember Ana E. Sandoval seconded the motion. The motion passed by the following vote:

Aye: 10 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Courage and Perry

Absent: 1 Pelaez

SW/ah
06/10/2021
Item No. 24

ATTACHMENT I

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**SAN ANTONIO PARKS FOUNDATION
MANAGEMENT AGREEMENT**

This Management Agreement (“Agreement”) is made and entered as of the ____ day of _____ 2021, by and between the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or designee, pursuant to Ordinance No. _____, dated _____ (“CITY”), and San Antonio Parks Foundation (“SAPF”), a Texas 501C (3) non-profit corporation acting by and through its duly authorized officers. SAPF and CITY shall collectively be referred to as “the Parties.”

WITNESSETH:

WHEREAS, CITY owns the Japanese Tea Garden and Jingu House located at 3853 North St. Mary’s Street in San Antonio, Texas; and

WHEREAS, CITY and SAPF have had a successful relationship since 2005, through a Memorandum of Understanding that resulted in the successful renovation, preservation and reopening of the Japanese Tea Garden; and

WHEREAS, in April 2011, CITY and SAPF entered into a ten-year License Agreement to permit SAPF to operate and manage the Jingu House at the Japanese Tea Garden and transition reservation responsibilities from CITY to SAPF; and

WHEREAS, CITY and SAPF wish to continue their partnership for the benefit of the citizens and visitors of San Antonio through a new Management Agreement;

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

I. TERM

1.1 The term of this Agreement shall be ten years, commencing on **June 1, 2021** and expiring on **May 31, 2031**, unless earlier terminated as provided under the terms of this Agreement.

1.2 This Agreement may be extended administratively for one additional ten-year term, to begin immediately following the initial term.

II. STRUCTURE OF SAPF

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

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

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

III. PREMISES TO BE MANAGED AND PERMITTED USES

- 3.1 Pursuant to this agreement, SAPF assumes the responsibility for scheduling, managing reservations and operations of the following premises within the Japanese Tea Garden as shown on **Exhibit A** ("Premises"):
- The Jingu House
 - Adjacent patio area
 - The Pavilion
 - The Waterfall area
- 3.2 If it becomes available during the term of the agreement, the Mexican Village may be administratively added to the premises.
- 3.3 SAPF has had full opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. SAPF'S taking possession of the Premises shall be conclusive evidence of SAPF'S acceptance thereof in good order and satisfactory condition, and SAPF hereby accepts the Premises in its present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which it is managed. SAPF accepts the Premises with the full knowledge, understanding and agreement that CITY disclaims any warranty of suitability for SAPF'S intended purposes.
- 3.4 SAPF agrees that no representation respecting the condition of the Premises and no specific promises to decorate, alter, repair, or improve the Premises, either before or after the execution of this Agreement, have been made by CITY or its agents to SAPF unless the same are contained or made a part of by specific reference.
- 3.5 CITY and SAPF acknowledge that all or portion of the Premises may not comply with current requirements of the Americans with Disabilities Act of 1990. Neither CITY nor SAPF shall have the obligation to repair or modify improvements which existed prior to the commencement of this Agreement and which might be determined to be non-compliant with the Americans with Disabilities Act. Any improvements performed by CITY or SAPF following the commencement of this Agreement shall be required to comply with all requirements of the Americans with Disabilities Act, as administered by the Texas Department of Licensing and Regulation (TDLR) including the provision of any variance or exception that may be authorized by TDLR.
- 3.6 SAPF acknowledges that the Japanese Tea Garden is open to the public daily from dawn to dusk and the intent of the parties is that it remains open to the public during those hours, or future operating hours, irrespective of Events, as defined below.
- 3.7 SAPF shall have the right to enter into agreements with one or more contractors to meet SAPF'S rights and obligations in this Agreement, such contractor agreements to be subject to the review and approval of CITY. SAPF may terminate the rights of any contractor that does not provide an acceptable level of services or does not comply with the provisions of such agreements.
- 3.8 SAPF shall have the right, but not the obligation, to establish and collect a permit fee from privately hired professional photographers conducting business at the Premises and within the Japanese Tea Garden ("Photography Fee"). Photography Fees collected by SAPF shall be considered a source of Gross Revenue as defined in Section 6.1. SAPF'S establishment and revision of Photography Fees shall be subject to the prior review and approval of the Director of the Parks and Recreation Department. Visitors of the Premises and Japanese Tea Garden shall be exempt from the

Photography Fee provided that captured photography is taken for the purpose of personal enjoyment and is not intended for resale purposes or fulfillment of contractual obligations.

- 3.9 SAPF staff and visitors to the Premises have the non-exclusive right to park vehicles in the adjacent parking area, shown on Exhibit A, at no charge and subject to availability. SAPF shall have the right, but not the obligation to establish and collect a tour fee from private tours visiting the Premises and the Japanese Tea Garden ("Tour Fee"). Tour Fees collected by SAPF shall be considered a source of Gross Revenue. SAPF's establishment and revision of Tour Bus Fees and location(s) of tour bus parking area(s) shall be subject to the prior review and approval of the Director of the Parks and Recreation Department. Non-profit organizations and City-organized functions shall be exempt from the Tour Bus Fee.

IV. JINGU HOUSE AND ADJACENT OUTDOOR PATIO AREA

- 4.1 SAPF will operate a food service establishment ("Food Service Establishment") within the Jingu House and adjacent outdoor patio area, which shall be open to the public a minimum of twenty (20) hours each week. The Food Service Establishment will be operated in a manner that provides quality foods and beverages appropriate for visitors to the Japanese Tea Garden. SAPF agrees that the Food Service Establishment will be operational throughout the term of this Agreement; however, SAPF will not be considered in default of this Agreement in the event that the Food Service Establishment is not operational during the initial three (3) months following the Commencement Date or at any time during the term of this Agreement due to failure of structural elements, electrical, plumbing and/or HVAC systems and equipment for the Premises, and for brief periods of time during which SAPF may end its contractual relationship with one food service establishment contractor and enter into an agreement with another food service establishment contractor.
- 4.2 When not in use for Events, SAPF may use the Jingu House for SAPF purposes, including administrative functions and SAPF social events and meetings.
- 4.3 When not in use for Events or during the hours of operation of the food service establishment, the adjacent outdoor patio area must be available for use by the public.
- 4.5 SAPF shall have the right to establish and utilize a process for the designation or naming of rooms within the Jingu House with such designation and names to be in effect during the term of this Agreement and any renewals or extensions. Room names must be approved by the Parks and Recreation Director or his designee. If SAPF desires that a room or rooms be officially designated or named by the City of San Antonio, approval will be necessary under the City of San Antonio naming process for City facilities in effect at that time.

V. EVENTS

- 5.1 SAPF will be responsible for the scheduling, coordinating and charging of fees for rental and use by the public of the Premises within the Japanese Tea Garden as shown on **Exhibit A**, as well as other spaces within the Japanese Tea Garden as may be agreed to by SAPF and CITY. These areas may be used for wedding ceremonies and social gatherings during hours that the Japanese Tea Garden is open to the public. Additional locations for Rental Events, other uses, and events at times that the Japanese Tea Garden is not open are subject to the prior approval of CITY, through its Parks and Recreation Director. Rental events held at times that the Japanese Tea Garden is not open will require security.

- 5.2 Prior to any Rental Events occurring and within thirty (30) days following the Commencement Date, SAPF will establish policies, fees and a use agreement for Rental Events, such policies, fees and use agreement and any future changes thereto to be subject to the prior written approval of CITY, through its Parks and Recreation Director. Fees established shall be reasonable, customary, and based on rates found at similar facilities for similar use.
- 5.3 SAPF may allow food, beverages, equipment and decorations at the Rental Events, as requested by-renters, and will establish and charge fees to provide these items. All contractors providing food and beverages must provide evidence of liquor liability if alcoholic beverages are to be sold or served.
- 5.4 The following restrictions apply to Rental Events:
- a) no obstructions of walkways or paths will be created or allowed during regular hours of operation at Japanese Tea Garden
 - b) no tables, chairs or food/beverage service will be allowed in the waterfall area during regular hours of operation at Japanese Tea Garden
 - c) amplified music is prohibited, and
 - d) no birdseed or rice will be allowed
- 5.5 A representative of SAPF must be on site and remain on site for the duration of all Rental Events.
- 5.6 All manpower and expenses associated with Rental Events, including set up and break down of equipment and custodial costs, are the responsibility of SAPF.
- 5.7 SAPF will collect a damage deposit for each Rental Event. If any damage occurs as a result of a Rental Event, SAPF will notify the CITY within one business day and the deposit will be utilized to pay for the repair of the damage, as needed.
- 5.8 SAPF will ensure that the Rental Events, including set-up and clean-up activities, do not significantly impact the use and enjoyment of Japanese Tea Garden by other visitors.
- 5.9 SAPF Days: SAPF may schedule up to ten (10) SAPF events at the Premises each calendar year during the term of this Agreement, subject to availability. SAPF Event is defined as an event held by SAPF, such as meetings, receptions and social events. SAPF will not pay any rental fees or deposits but is responsible for all direct costs associated with SAPF Events. Additional locations for SAPF Events and events at times that the Japanese Tea Garden is not open are subject to the prior approval of CITY, through its Parks and Recreation Director. SAPF Events held at times that the Japanese Tea Garden is not open will require security.
- 5.10 CITY Days: City may schedule up to ten (10) City Events at the Premises each calendar year during the term of this Agreement, subject to availability. City Event is defined as a CITY or CITY sponsored event, such as meetings, receptions and social events. CITY will not pay any rental fees or deposits but is responsible for all direct costs. CITY will use its best efforts to request City Events at least two weeks in advance; however, SAPF acknowledges that this may not always be feasible.

VI. GRANTS, FUNDRAISING AND DONATIONS

- 6.1 SAPF shall have the right to pursue corporate and individual donors, sponsorships and apply for grants for funding of capital improvements and other benefits for the Japanese Tea Garden including the Premises. Funds received from grants, fundraising efforts and donations will be deposited into the Capital Repair and Improvement Fund or into a SAPF endowment fund, as may be agreed to by the parties.

- 6.2 In the event that CITY is the beneficiary of any donations or contributions designated to benefit the Japanese Tea Garden or the Premises, CITY will receive and process such donations in accordance with CITY policy. CITY will consult with SAPF regarding the use of all donations and contributions and, subject to the consent of SAPF; CITY may elect to allow SAPF to facilitate the expenditure of donations and contributions in compliance with their designation.

VII. OPERATIONS AND MAINTENACNE RESPONSIBILITIES

- 7.1 SAPF assumes all responsibilities for the costs of operations associated with the Premises including events.
- 7.2 SAPF Maintenance Responsibilities:
- 7.2.1 SAPF is responsible for the repair and maintenance within the Jingu House and adjacent outdoor patio area, including the necessary manpower, as follows:
- a) custodial services and supplies for all areas, including the restrooms
 - b) placement of trash in trash dumpsters
 - c) pest control
 - d) replacement of light bulbs and ballasts
 - e) maintenance of interior finishes, including paint, wall covering, and floor finishes.
- 7.2.2 SAPF will provide custodial services for all Rental Events and SAPF Events, ensuring that the area is clean before and after each such Event.
- 7.2.3 SAPF may use trash dumpsters provided by CITY for trash generated by daily activities within the Jingu House, adjacent outdoor patio area, and for Rental Events; however, SAPF will be responsible for collecting and removing trash from large Events that would exceed the capacity of trash dumpsters provided by CITY.
- 7.2.4 SAPF is responsible for contracting with a certified elevator company to perform maintenance and annual inspection of the Jingu House elevator.
- 7.3 CITY Maintenance Responsibilities:
- 7.3.1 CITY is responsible for all costs associated with the repair and maintenance of the structural elements, electrical, plumbing, and HVAC systems and equipment for the Premises, subject to availability of funds and appropriation by City Council. CITY will be permitted to access the interior and exterior of the Jingu House for the purpose of performing maintenance and repairs and such access shall not be unreasonably withheld by SAPF.
- 7.3.2 CITY does not have any obligation for the repair, maintenance, or replacement of furniture, equipment, or fixtures used by SAPF in connection with the Premises, including, but not limited to, stoves, refrigerators, dishwashers, tables, chairs, and office equipment, tables and chairs.
- 7.3.3 CITY shall notify SAPF of all maintenance, repair and improvements to the Premises prior to commencement of such activities; however, emergency repairs may not permit CITY to provide notification in advance.
- 7.3.4 CITY is responsible for reimbursement of all cost associated with the annual inspection, maintenance, and repair of the elevator.

VIII. IMPROVEMENTS

- 8.1 SAPF shall not construct, or allow to be constructed, any other improvements or structures on the Premises nor shall SAPF make, or allow to be made, any alterations to the Premises unless approved by the Director of Parks and Recreation Department.
- 8.2 SAPF will present for review and written approval all designs, plans, and specifications to the CITY and applicable CITY boards prior to commencing any construction or installation upon the Premises for SAPF's improvement projects during the term of this Agreement. While CITY may render any assistance it deems advisable, all costs for construction and related activities will be borne solely by SAPF for projects that SAPF and CITY agree that SAPF shall manage. CITY reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of fields and facilities to ensure SAPF's compliance with this Agreement.
- 8.3 SAPF agrees that it will obtain any and all plans approvals, necessary permits, and clearances relative to construction from appropriate local, state, and federal regulator agencies, as required. A copy of said permits or clearances will be provided to CITY prior to the start of any construction. SAPF covenants that it will not bind, or attempt to bind, CITY for payment of any money in connection with any construction and that it will fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to SAPF during the performance of any construction and against any claim for injury to person or property.
- 8.4 SAPF will provide to CITY copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 8.5 Any improvements installed by SAPF which can be removed without damage to the Premises may be removed at the expense of SAPF at the termination of this Agreement. If the improvements are not removable without damage to the Premises, the improvements will become property of the City.

IX. CITY'S RIGHT OF INSPECTIONS

- 9.1 CITY, through its Parks and Recreation Director and/or his representative(s), shall have the right to inspect the Premises at any time.

X. UTILITIES

- 10.1 **Electric Utilities:** Electrical utilities are provided to the Premises through City's utility meter which serves the Japanese Tea Garden and the Premises. City has determined the average electrical utility costs for the Japanese Tea Garden and the Premises. If SAPF exceeds the average they will be billed for the excess. City shall submit electrical utility invoice to SAPF on a quarterly basis and SAPF agrees to remit payment within 30 days of receipt.
- 10.2 **Water/Sewer Utilities:** A water submeter has been installed at the Premises to record SAPF's water usage. Every month, City shall conduct a submeter reading to record SAPF's usage for the month. City shall submit water invoice to SAPF on a quarterly basis and SAPF agrees to remit payment within 30 days of receipt.
- 10.3 **Other Utilities:** SAPF will provide for and pay directly to the utility companies, all other utility company connection charges, including, but not limited to, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for telephone, cable/satellite TV, security services, or any other utility services, used in or on the Premises. CITY will not be liable to SAPF in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements, or any cause beyond the control of CITY.

XI. REVENUE AND EXPENDITURES

- 11.1 SAPF may expend funds from Gross Revenue in order to offset the following expenses associated with its activities under the terms of this Agreement ("Approved Expenses"):
 - 11.1.1 Cost associated with the preparation of the annual Financial Statement;
 - 11.1.2 Administrative costs directly associated with the rights and obligations outlined in this Agreement which may include personnel and benefits, utilities, insurance, postage, telecommunications, advertising and publicity, website hosting/design/administration, and legal fees for development of contract templates; and
 - 11.1.3 Other expenses as approved by CITY through its Parks and Recreation Director.
- 11.2 All revenue remaining after payment of Approved Expenses will be considered net revenue ("Net Revenue").
- 11.3 Upon Commencement of this Agreement, SAPF will establish a Capital Repair and Improvement Fund account at a reputable financial institution and deposit into such Capital Repair and Improvement Fund all Net Revenue. Net Revenue may be used only for future Capital Repair and Capital Improvement projects for the Japanese Tea Garden or Premises. On an annual basis, or other schedule as may be agreed to by the parties, SAPF and CITY will consider possible projects to be funded from Net Revenue. Approved Projects will be accomplished by CITY, or with the agreement of the parties, by SAPF. In the event that no projects are identified by CITY and SAPF in any year during the term of this Agreement, the parties may mutually agree to transfer a percentage of Net Revenue from the Capital Repair and Improvement Fund into SAPF's endowment fund. In no event will SAPF utilize Net Revenue for any purpose other than for approved projects and transfers.
- 11.4 At the conclusion of the term of this Agreement, or any extended term, or upon the early termination of this Agreement, all funds remaining in the Capital Repair and Improvement Fund may only be used for the benefit of the Japanese Tea Garden.

XII. RECORDS AND REPORTS

- 12.1 Throughout the term of this Agreement and any extensions thereof, SAPF will maintain complete and accurate permanent financial records of all income and expenditures, including Gross Revenue, Approved Expenses, Net Revenue and deposits to and withdrawals from the Bank Account. Such records will be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Financial records and supporting documentation will be preserved in Bexar County, Texas, for at least five (5) years after the creation of the documentation and will be open to City inspection, review and audit following reasonable notification of intent to inspect. City staff, a Certified Public Accountant (CPA), or other auditors as designated by City may perform such audits and/or reviews. City reserves the right to determine the scope of every audit and/or review. In accordance herewith, SAPF agrees to make available to City all accounting records.
- 12.2 On or before April 1st of each year during the term of this Agreement, or other date that SAPF and City may select, SAPF shall provide to City:
 - 12.2.1 Financial Statement for SAPF's previous fiscal year which has been reviewed by an independent Certified Public Accountant ("Financial Statement"). The Financial Statement will reflect SAPF's Gross Revenue, Approved Expenses, Net Revenue as well as documentation of funds received from fundraising, grants and sponsorships. City shall have the right to request copies of statements of the Bank Account in support of the Financial Report.

- 12.2.3 A report of outlining the Events and activities for SAPF's previous fiscal year (Event and Activity Report) including:
- Events and other activities
 - Officers and Board Members
 - Any other pertinent information regarding the actions and/or activities of SAPF

XIII. DEFAULTS AND TERMINATION RIGHTS

- 13.1 Default by SAPF: Any of the following events shall constitute default by SAPF under this Agreement:
- 13.1.1 SAPF shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by SAPF, and such default shall continue for a period of thirty (30) days after notice of default by CITY to SAPF, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided so long as SAPF has commenced to cure such default and diligently pursues such cure to completion.
- 13.1.2. SAPF abandons all or any part of the Premises.
- 13.1.3. SAPF fails to maintain its status as a 501 (c)(3) non-profit entity.
- 13.2 Remedies of CITY: Upon the occurrence of an event of default by SAPF as specified in this Agreement hereof, CITY shall be entitled to terminate this Agreement and CITY shall have no further obligation hereunder.
- 13.3 Default by CITY: CITY shall be in default under this Agreement if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice of default by SAPF to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that CITY has commenced to cure such default and diligently pursues such cure to completion.
- 13.4 Remedies of SAPF: Upon the occurrence of an event of default as specified in this Agreement hereof, SAPF shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.

XIV. INDEMNIFICATION

- 14.1 SAPF covenants and agrees to FULLY INDEMNIFY CITY and authorized representatives of CITY from all liability of any kind arising out any negligent act or omission of SAPF's use of the PREMISES.
- 14.2 The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the negligent act or omission or willful misconduct of CITY, its officers or employees.
- 14.3 IN THE EVENT SAPF AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPENTENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY 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, FEDERAL, OR INTERNATIONAL LAW.

- 14.4 SAPF shall promptly advise CITY in writing of any claim or demand against CITY or SAPF known to SAPF related to or arising out of SAPF's or CITY's activities under this Agreement.
- 14.5 The provisions of this Indemnification 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.
- 14.6 Any and all employees, representatives, agents or volunteers of SAPF while engaged in the performance of any work required by the CITY or any work related to a lease of space, Management Agreement or concession agreement with the CITY shall be considered employees, representatives, agents or volunteers of SAPF only and not the CITY. Any and all claims that may result from any obligation for which SAPF may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of SAPF.
- 14.7 All personal property placed in the Premises shall be at the sole risk of SAPF. CITY shall not be liable and SAPF waives all claims for any damage either to the person or property of SAPF or to other persons due to the Premises or any part -of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current, or from any act or omission of employees, or other occupants of the Premises, or any other persons, due to the happening of any accident in or about the Premises. SAPF shall save and hold harmless CITY from any claims arising out of damage to SAPF's property or damage to SAPF's business.

XV. INSURANCE REQUIREMENTS

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

Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<i>INSURANCE TYPE</i>	<i>LIMITS</i>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to Property Rented by you g. Damage to Rented Premises h. Broad Form Property Damage to include Fire and Legal Liability	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Property Insurance	One Hundred Percent (100%) replacement value for Structure, and replacement cost coverage of eighty percent (80%) of actual cash value for improvements and betterments
6. Umbrella or Excess Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)
*7. Liquor Liability	\$1,000,000 per occurrence, \$2,000,000 general aggregate
*8. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
*9. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
*10. Explosion, Collapse, Underground Property Hazard Liability	\$2,000,000 per claim
*If Applicable	

- 15.4 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

- 15.5 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 15.6 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 15.7 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 15.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.
- 15.9 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 15.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

XVI. ASSIGNMENT

- 16.1 This Agreement is personal to SAPF. It is non-assignable, in whole or in part, and any attempt to assign this Agreement will terminate all privileges granted to SAPF hereunder. This section shall not restrict SAPF's right to enter into agreements with contractors as permitted in Section 3.6 of this Agreement.

XVII. RELATIONSHIP OF PARTIES

- 17.1 Nothing contained in this Agreement shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision

contained in this Agreement nor any acts of the parties hereto create a relationship other than the relationship of CITY and SAPF.

XVIII. CONFLICT OF INTEREST

18.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

18.2 Pursuant to the subsection above, SAPF AND CONTRACTOR warrant and certify, and this Agreement is made in reliance thereon, that by contracting with the City, SAPF AND CONTRACTOR do not cause a City employee or officer to have a prohibited financial interest in the Contract. SAPF AND CONTRACTOR further warrant and certify that they have tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX. SEPARABILITY

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

XX. NOTICES

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

City of San Antonio
Parks & Recreation Department
Attn' Director
P.O. Box 839966
San Antonio, Texas 78283-3966

San Antonio Parks Foundation
Attn: President and CEO
400 N. St. Mary's St. Suite 101
San Antonio, Texas 78212

XXI. TEXAS LAW TO APPLY

21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. GENDER

- 22.1 Words of gender used in this Management Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. NON-DISCRIMINATION

- 23.1 As part of this Agreement, SAPF understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, it shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXIV. MISCELLANEOUS

- 24.1 SAPF shall observe and comply with all federal, state and local laws, regulations, ordinances, and codes pertaining to its - activities under this Agreement, including but not limited to, those pertaining to alcohol, noise levels, and traffic control.
- 24.2 SAPF and its contractors will not obligate CITY for any debt related to the Premises without the prior written consent of CITY.

XXV. CAPTIONS

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

XXVI. HOLDING OVER

- 26.1 Should SAPF hold over the Premises, or any part of the Premises, after the expiration or termination of the term of this Agreement, or any extension of this Agreement, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding Agreement continuing in effect. The inclusion of the preceding sentence shall not be construed as CITY's consent for SAPF to hold over.

XXVII. INCORPORATION OF EXHIBITS

- 27.1 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits.

XXVIII. INCORPORATION OF ATTACHMENTS

- 28.1 Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments.

XXIX. ENTIRE AGREEMENT/AMENDMENT

- 29.1 This Management Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by SAPF.
- 29.2 No amendment, modification, or alteration of the terms of this Management Agreement shall be

binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

29.3 It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

XXX. LEGAL AUTHORITY

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

**CITY OF SAN ANTONIO,
A Texas Municipal Corporation**

**San Antonio Parks Foundation
A Texas Non-Profit Corporation**

By: _____
Homer Garcia III, Director
Parks & Recreation Department

By: _____
Mary Jane Verette, President and CEO

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A – PREMISES
ATTACHMENT I – SAN ANTONIO PARKS FOUNDATION ARTICLES OF INCORPORATION
ATTACHMENT II – SAN ANTONIO PARKS FOUNDATION BYLAWS**