

13-1093

(Do Not Write Above This Line)

First Reading

Committee Fin/Executive  
Date 6-12-13  
Chair Yolanda G. Moore  
Referred To \_\_\_\_\_

FINAL COUNCIL ACTION

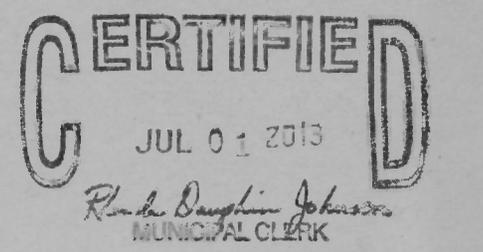
2<sup>nd</sup>     1<sup>st</sup> & 2<sup>nd</sup>     3<sup>rd</sup>  
Readings  
 Consent     V Vote     RC Vote

AN ORDINANCE BY  
FINANCE EXECUTIVE COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AND EXECUTE A LEASE AGREEMENT WITH THE PIEDMONT PARK CONSERVANCY FOR THE PIEDMONT PARK PROMENADE; AND AUTHORIZING THE WAIVER OF CITY CODE SECTION 2-1547 REGARDING THE PROCEDURES FOR LEASING CITY-OWNED REAL PROPERTY FOR PURPOSES OF ENTERING THIS AGREEMENT, WHERE SAID WAIVER IS BASED UPON THE UNIQUE ARRANGEMENT THAT THE PIEDMONT PARK CONSERVANCY HAS WITH THE CITY REGARDING PIEDMONT PARK AND THE CONSERVANCY'S CREATION OF THE PROMENADE AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.

Committee Fin/Exec  
Date 6-26-13  
Chair [Signature]  
Action Fav  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other \_\_\_\_\_  
Members [Signatures]  
Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other \_\_\_\_\_  
Members \_\_\_\_\_  
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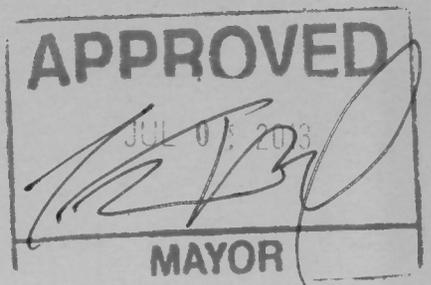


- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1<sup>ST</sup> ADOPT 2<sup>ND</sup> READ & REFER
- PERSONAL PAPER REFER

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other \_\_\_\_\_  
Members \_\_\_\_\_  
ADOPTED BY  
JUL 01 2013  
COUNCIL  
Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action \_\_\_\_\_  
Fav, Adv, Hold (see rev. side) \_\_\_\_\_  
Other \_\_\_\_\_  
Members \_\_\_\_\_  
Refer To \_\_\_\_\_

MAYOR'S ACTION



Date Referred 6/14/13  
Referred To: Finance Exec  
Date Referred \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_

AN ORDINANCE BY  
THE FINANCE/EXECUTIVE COMMITTEE

**AN ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AND EXECUTE A LEASE AGREEMENT WITH THE PIEDMONT PARK CONSERVANCY FOR THE PIEDMONT PARK PROMENADE; AND AUTHORIZING THE WAIVER OF CITY CODE SECTION 2-1547 REGARDING THE PROCEDURES FOR LEASING CITY-OWNED REAL PROPERTY FOR PURPOSES OF ENTERING THIS AGREEMENT, WHERE SAID WAIVER IS BASED UPON THE UNIQUE ARRANGEMENT THAT THE PIEDMONT PARK CONSERVANCY HAS WITH THE CITY REGARDING PIEDMONT PARK AND THE CONSERVANCY'S CREATION OF THE PROMENADE AT NO COST TO THE CITY; AND FOR OTHER PURPOSES.**

**WHEREAS**, the Piedmont Park Conservancy ("**PPC**") is a 501(c)(3) non-profit organization dedicated to the preservation and restoration of Piedmont Park (the "**Park**"), which is owned by and located in the City of Atlanta ("**City**"); and

**WHEREAS**, part of the PPC's mission is to support the City in developing, enhancing, rehabilitating, and maintaining the Park so that it remains a cultural and recreational resource; and

**WHEREAS**, the PPC has a twenty-year history of successfully working with the City to fulfill its mission, with its efforts being recognized nationally, including by the National Park Service which chose Piedmont Park as one of six case studies for how to successfully manage and remediate large public parks; and

**WHEREAS**, most recently, the details, terms and conditions of the relationship between the PPC and the City have been set forth in a Memorandum of Understanding dated June 19, 2012 (the "**MOU**"); and

**WHEREAS**, in 2011 and 2012, the Conservancy performed, at no cost to the City, approximately \$2 million worth of improvements, and preservation and restoration services to create the Piedmont Park Greensward; and

**WHEREAS**, the Greensward is comprised of two passive Bermuda-sod covered meadows, the upper of which is a 1.5 acres and contains a circular concrete pad at the top of the oval (delineated on Exhibit A hereto as the entire shaded area, hereinafter referred to as the "**Promenade**") and the lower of which is 0.75 acres (delineated on Exhibit A hereto as the entire hatch-marked area, hereinafter referred to as the "**Fountain Landing**"), adjoined by a set of Spanish steps ("**Fountain View Steps**"), a marble-faced interactive fountain flanked by a grand arbor (together hereinafter referred to as "**Legacy Fountain**") located on the Fountain Landing, public restrooms abutting the Fountain



Landing, winding paths on the outer perimeter of the Promenade and Fountain Landing, and an underground control room that operates the interactive fountain, (collectively the “*Greensward*”, depicted on **Exhibit A** hereto); and

**WHEREAS**, PPC has agreements with the City whereby PPC operates and manages amenities in Piedmont Park, including the Pool and Bathhouse, the Greystone Building, and Magnolia Hall, where all net rental proceeds are utilized to maintain and improve the amenity and/or are utilized for the benefit of the Park; and

**WHEREAS**, Piedmont Park does not currently have any outdoor, passive green space that can be rented by the public as an amenity for purposes such as weddings and parties; and

**WHEREAS**, the Promenade is structured so that it can easily be fenced and utilized as an amenity available by rental only; and

**WHEREAS**, utilizing the Promenade as a rental amenity, rather than as green space open to the public for recreation, will not impact the public’s use of the remainder of the Greensward or any other portion of the Park; and

**WHEREAS**, it is in the best interest of the City to add the Promenade to the list of other amenities operated and managed by the PPC, pursuant to the conditions set forth in the lease agreement authorized by this ordinance; and

**WHEREAS**, because of the unique circumstances regarding the PPC, most notably that the PPC created the Promenade at no cost to the City, that the PPC has raised tens of millions of dollars which it has used to restore and maintain the Park for over twenty years, and that the PPC is the only organization whose sole mission is to develop and maintain the Park, the Promenade lease agreement should be awarded without a competitive process. After reviewing the facts of this situation, the Chief Procurement Officer agrees that the situation is unique and supports waiving the Procurement Code for the purpose of entering the lease agreement (See Adam Smith Memorandum, **Exhibit B** hereto).

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:**

**Section 1:**

The Mayor, on behalf of the City, is hereby authorized to enter into a lease agreement with the Piedmont Park Conservancy for the Promenade, whereby said agreement shall be substantially similar to the lease attached hereto as **Exhibit C** (“*Agreement*”). The Agreement shall establish that in lieu of making rental payments, PPC shall pay the full and complete costs and expense of managing, operating repairing and maintaining the Promenade, except where otherwise indicated within the Agreement. The Agreement shall require that the PPC expend all revenue it derives from the Agreement, including



without limitation from Promenade rentals and the food and beverage sales associated therewith, on the following items only: (i) operating expenses incurred by the PPC with respect to the Greensward, including without limitation repair, maintenance, and improvement thereof; (ii) projects for the renovation, restoration and beautification of other segments of Piedmont Park; (iii) expenses incurred from the PPC's promotion of Piedmont Park; and (iv) such other expenses as may be incurred by the PPC in connection with its mission to enhance and preserve Piedmont Park.

**Section 2:**

The term of the Agreement shall be for a period of five years from the date the Agreement is executed, with an option to renew for two additional five-year terms upon mutual agreement of the PPC and the City.

**Section 3:**

The Promenade shall be used solely as an open-air amenity that is available by reservation only. It shall not be deemed "public park" that is open to the public-at-large for general park and recreational purposes. Instead, the Promenade shall be fenced, closed and securely locked at all times that it is not being used pursuant to a reservation agreement with the PPC or used as set forth in Section 4(C) below. The following rules shall apply to use of the Promenade:

- A. The Promenade shall be used by the PPC solely as a rental facility that may be rented for private recreational and/or private cultural functions only, including without limitation parties, receptions, banquets, musical performances, art openings, exhibitions and weddings ("***Promenade Event***" or "***Promenade Events***"). Promenade Events may include recreational or cultural functions whose purpose is fundraising.
  - Promenade Events shall not be deemed "Outdoor Events" or "Gated Ticketed Events" as defined in the Atlanta Code of Ordinances (the "***Code***") Chapter 142, but rather shall be deemed facility rentals.
  - Promenade Events must be private events. The PPC is prohibited from issuing permits regarding the Promenade or any other portion of the Greensward for outdoor festivals, large gatherings, assemblies, or any other outdoor event that is regulated by Chapter 142 of the Code.
- B. All Promenade Events must require attendees to possess either an invitation or a ticket to gain admission.
- C. Vending may occur at Promenade Events without obtaining a separate vending permit from the City. Items may not be sold or distributed to anyone located outside of the Promenade.
- D. Promenade Events may include sale or service of food and/or alcoholic beverages. Except during and for purposes of set up and take down, Promenade Event food and alcohol shall not be removed from the Promenade.
- E. Promenade Events may continue beyond 11:00 p.m. provided that attendees leaving the Event walk directly from the Promenade to the Piedmont Park parking



deck and then leave the Park immediately. Any person who enters the Park after 11:00 p.m. will be subject to arrest for violation of the City's park hours law, set forth in Code Section 110-60(a).

- F. The following ordinances that regulate park conduct and activities shall not apply to any Promenade Event, unless expressly stated otherwise by the PPC in a Promenade rental agreement: Code Section 110-59(a)(10) (prohibiting driving stakes, posts, poles, etc. into the ground); Code Section 110-59(a)(11) (prohibiting inflatable amusements, amusements requiring water and amusements requiring an independent power source); Code Section 110-59(a)(12) (prohibiting erection of tents or canopies larger than ten feet by ten feet); Section 110-59(a)(13) (prohibiting glass containers); Code Section 110-60 (prohibiting being in a park after 11:00 p.m.); Code Section 110- 62 (prohibiting sale of goods, articles and services); Code Section 110- 64 (regulating prices of goods, articles and services sold); Code Section 110- 71 (prohibiting horses and horse-back riding); Code Section 110-72 (prohibiting flying model airplanes); and Code Section 110-76(a)(5) (prohibiting alcohol).

#### **Section 4:**

Throughout the term of the Agreement, the City will not issue any permit for an Outdoor Event, as defined and regulated by Chapter 142 of the Code, to occur on the Green Sward or any portion thereof. In addition, the City will not issue a permit for a Gated Ticketed Event as defined in Chapter 142 of the Code ("**GTE**"), to occur on the Greensward or any portion thereof, except that the City may issue a GTE permit to the PPC provided that the following conditions are met:

- A. The City, by and through the Commissioner of the Department of Parks and Recreation (the "**Commissioner**") may issue a maximum of four GTE permits per calendar year to the PPC for the Fountain Landing, which may not exceed a cumulative total of thirty (30) days of Fountain Landing closure each calendar year;
- B. The PPC may not close the Fountain Landing for a GTE between Memorial Day and Labor Day;
- C. During those days where the PPC closes the Fountain Landing for a GTE, it may also close any other portion(s) of the Greensward and may utilize the Promenade to accommodate the GTE. During those times when the Promenade is being used for a GTE and not for a Promenade Event, the Promenade rules set forth in Section 3 above shall not apply; the specific GTE rules shall govern the conduct that is permissible on the Promenade during the GTE;
- D. The GTE must be executed entirely by the PPC, its contractors and/or consultants. The GTE must be fully financed by the PPC and/or sponsors obtained by the PPC;
- E. PPC may not charge any fees for use of the Fountain Landing except for the entrance fees paid by attendees and vendor fees paid by entities selling goods and/or services at the GTE; and
- F. The PPC must use all net revenue from the GTE for the maintenance and/or improvement of Piedmont Park, including without limitation the Greensward.



**Section 5:**

The City and the PPC entered into an MOU on June 19, 2012. The Agreement does not impact nor supersede the MOU. The MOU shall remain in full force and effect throughout the term of the Agreement (and any renewal term), except upon expiration or termination of the MOU pursuant to the terms set forth therein.

**Section 6:**

Based upon the unique circumstances regarding the Promenade Agreement, and the Chief Procurement Officer's designating this transaction as a special procurement, the requirements of the City's Procurement and Real Estate Code, including but not limited to Code Section 2-1547 regarding the leasing of City-owned real property, are hereby waived for purposes of the Agreement only.

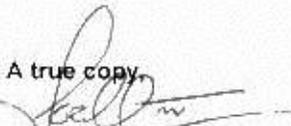
**Section 7:**

The Agreement shall not become binding on the City, and the City shall incur no liability upon the same until such Agreement has been executed by the Mayor, attested to by the Municipal Clerk and delivered to the Piedmont Park Conservancy.

**Section 8:**

All ordinances and parts of ordinances in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of the conflict.

A true copy,

  
Deputy Clerk

ADOPTED by the Atlanta City Council  
APPROVED by Mayor Kasim Reed

JUL 01, 2013  
JUL 01, 2013





Kasim Reed  
Mayor

## CITY OF ATLANTA

SUITE 1900  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6204 Fax: (404) 658-7705  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

DEPARTMENT OF PROCUREMENT  
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP  
Chief Procurement Officer  
[asmith@atlantaga.gov](mailto:asmith@atlantaga.gov)

### MEMORANDUM

TO: George Dusenbury  
Commissioner

FROM: Adam L. Smith 

RE: **Special Procurement Authorization for FC-6729, Lease of the Greensward Promenade in Piedmont Park to the Piedmont Park Conservancy**

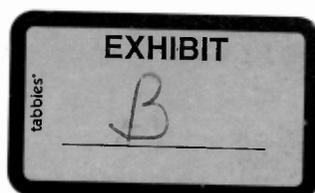
DATE: May 23, 2013

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I am in receipt of your Special Procurement request dated May 15, 2013, to allow the Piedmont Park Conservancy (“**PPC**”) to provide operations and management of the Greensward Promenade facility at Piedmont Park (the “**Park**”).

As stated in your memorandum, the Department of Parks Recreation and Cultural Affairs (“**DPRCA**”) has a long-standing working relationship and has entered into several operational agreements for facilities that the PPC has either built or renovate and operates for the betterment of the Park. As part of its \$40 million North Woods Expansion, the PPC built a new feature called the Greensward, a five-acre improvement that includes an upper Promenade connected by Spanish Steps to a Fountain Landing that includes an interactive fountain that serves as a splash pad for residents.

The PPC is the nonprofit organization, working with the City of Atlanta (the “**City**”) for the preservation of historic Piedmont Park. Since their inception over 20 years ago, the Conservancy has successfully restored the historic portion of Piedmont Park. By 2010, the Conservancy will have raised and invested more than \$64 million for park beautification, maintenance/security, programs, and also includes a 53-acre expansion of green space. The PPC has successfully transformed the once dilapidated Park into the most visited in green space in Atlanta. The PPC currently manages more





## MEMORANDUM

TO: George A. Dusenbury  
FROM: Adam L. Smith  
RE: **Special Procurement Authorization**  
**FC-6729, Lease of the Greensward Promenade in Piedmont**  
**Park to the Piedmont Park Conservancy**

DATE: May 23, 2013  
PAGE: 2

than 90 percent of the Park's daily maintenance care and security. Their efforts being recognized nationally by the National Park Service chose Piedmont Park as one of six case studies for how to successfully manage and remediate large public events.

DPRCA is seeking to enter into an operating and lease agreement with PPC to operate the promenade as a facility, leasing it to raise funds to support maintenance of the 50 acres of new parkland created as part of the North Woods Expansion. The terms stated in the agreement are for five (5) years with one (1) five (5) year renewal option.

Based on the information provided by the DPRCA, the DOP hereby grants your request for a Special Procurement designation in accordance to § 2-1191.1 of the Atlanta Code of Ordinances with PPC.

If you have any questions or need additional assistance, please contact Mr. Mano Smith, CPPB, CPPO, Contract Administrator, at 404-330-6351.

ALS/MAS/jab



City of Atlanta  
Department of Parks, Recreation and Cultural Affairs

LEASE AGREEMENT  
with  
PIEDMONT PARK CONSERVANCY, INC.  
For  
The Greensward Promenade

GEORGIA . . . . FULTON COUNTY

THIS LEASE AGREEMENT (the "*Agreement*") is entered into this \_\_\_\_ day of \_\_\_\_\_ by and between the City of Atlanta (the "*City*"), a municipal corporation of the State of Georgia, and the Piedmont Park Conservancy, Inc. (the "*Conservancy*"), a Georgia corporation and nonprofit charity under Section 501(c)(3) of the Internal Revenue Code, (collectively the "*Parties*").

W I T N E S S E T H T H A T :

WHEREAS, the Conservancy is a charitable non-profit organization dedicated to enhancing and preserving Piedmont Park in Atlanta, Georgia (the "*Park*") as a vital urban green space and as a cultural and recreational resource that enhances the quality of life for residents and guests of the City; and

WHEREAS, the City and the Conservancy have created a cooperative collaboration with each other for the purpose of preserving, restoring, developing, enhancing, rehabilitating, and maintaining the Park. Most recently, the details, terms and conditions of the relationship are set forth in a Memorandum of Understanding dated June 19, 2012 (the "*MOU*"). This Agreement does not supersede the MOU, and the MOU remains in full force and effect throughout the term provided therein; and

WHEREAS, in 2011 and 2012, pursuant to the MOU, the Conservancy performed approximately \$2 million worth of improvements, and preservation and restoration services to create the Piedmont Park Greensward; and

WHEREAS, the Greensward is comprised of two passive Bermuda-sod covered meadows, the upper of which is a 1.5 acres and contains a circular concrete pad at the top of the oval (the "*Promenade*") and the lower of which is 0.75 acres (the "*Fountain Landing*"), adjoined by a set of Spanish steps, a marble-faced interactive fountain (the "*Fountain*") flanked by a grand arbor located on the Fountain Landing, public restrooms abutting the Fountain Landing, winding paths on the outer perimeter of the Promenade and Fountain Landing, and an underground control room that operates the interactive Fountain (collectively the "*Greensward*", depicted on *Exhibit A* attached hereto and incorporated herein); and





WHEREAS, the City has dedicated the Promenade as a private amenity which is not open to the public, but rather is available by reservation only. The City has dedicated the remainder of the Greensward as park land open for public use; and

WHEREAS, the Parties desire to have the Conservancy operate and manage the Promenade pursuant to the terms and conditions set forth in this Agreement. The Parties further desire that the Conservancy retain all revenues from such operations to pay for the maintenance and improvement of the entire Greensward, with any excess revenues being used by the Conservancy to pay for maintenance and improvement of other areas of the Park; and

WHEREAS, the City's execution of this Agreement has been authorized by ordinance number 13-O-----, adopted by the Atlanta City Council on -----, 2013, and approved by the Mayor on -----, 2013. A copy of the ordinance is attached hereto as ***Exhibit B***.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinbelow set forth, the Parties hereto do hereby agree as follows:

**1. Leased Premises**

The City hereby leases the Promenade (including all of the improvements thereon) to the Conservancy and the Conservancy hereby leases the Promenade from the City. The Promenade is the oval, 1.5-acre passive Bermuda-sod covered meadow with a circular concrete pad at the top of the oval, located on the upper portion of the Greensward in Piedmont Park, Atlanta, Georgia, as depicted by the shaded area on ***Exhibit C*** which is attached hereto and incorporated herein (hereinafter referred to as "***Premises***" or "***Leased Premises***" or the "***Promenade***"). The City will not lease the Promenade or any other portion of the Greensward to any other person or entity; nor will it grant a permit for any Outdoor Event (as defined in City Code of Ordinances Chapter 142) on the Promenade or on any other portion of the Greensward, except as set forth in Section 18 below.

**2. Use of Premises**

2.1 Permitted Uses

2.1.1 The Premises shall be used by the Conservancy solely as a rental facility. The Promenade may be rented for private recreational and/or private cultural functions only, including without limitation parties, receptions, banquets, musical performances, art openings, exhibitions and weddings ("***Promenade Event***" or "***Promenade Events***"). Promenade Events may include recreational or cultural functions whose purpose is fundraising. Promenade Events shall



not be deemed “Outdoor Events” or “Gated Ticketed Events” as defined in the Atlanta Code of Ordinances Chapter 142, but rather shall be deemed facility rentals.

2.1.2 The Premises shall be used by the Conservancy for no other purpose, and the Conservancy shall not authorize use of the Premises for any other purpose without prior written consent from the Commissioner of the Department of Parks, Recreation and Cultural Affairs (the “*Commissioner*”). Any revenue received by the Conservancy or any sublessee from use of the Leased Premises that is not permitted herein, and that has not received written consent from the Commissioner, shall inure immediately and completely to the City.

## 2.2 Activities Permitted During Use of Premises

2.2.1 The following Sections of the City Code of Ordinances shall not apply to Promenade Events:

City Ordinance 110-59 (a)(10)  
City Ordinance 110-59 (a)(11)  
City Ordinance 110-59 (a) (12)  
City Ordinance 110-59 (a) (13)  
City Ordinance 110- 60  
City Ordinance 110- 62  
City Ordinance 110- 64  
City Ordinance 110- 71  
City Ordinance 110-72  
City Ordinance 110-76 (a)(5)

Should the Conservancy wish to implement at the Leased Premises one or more of the rules established by the Code Sections listed above, it may do so by including the rule in the Promenade rental agreement. At its discretion, the Conservancy may implement different rules at different Promenade Events, provided that the decision of which rules to apply is determined in compliance with Section 11 below.

2.2.2 Promenade Events may include sale or service of food and/or alcoholic beverages. Except during and for purposes of set up and take down, Promenade Event food and alcohol shall not be removed from the Promenade. The Conservancy shall have the right to retain its current liquor license or obtain a new liquor license allowing the Conservancy to sell and/or serve alcoholic beverages at any Promenade Event.



- 2.2.3 Vending may occur at Promenade Events without obtaining a separate vending permit from the City. Items may not be sold or distributed to anyone located outside of the Promenade.
- 2.2.4 Promenade Events may have amplified sound, provided that: (i) the sound is not plainly audible more than two hundred (200) feet from the location of the Promenade that is furthest from the sound source; and (ii) there is no amplified sound between 11:00 p.m. and 6:00 a.m. The Commissioner may extend the aforementioned amplified sound limits in his/her sole discretion.
- 2.2.5 During Promenade Events, the Promenade fencing may be expanded to include and enclose the path on one side of the Promenade for the sole purposes of locating utility connections and a staging area for Promenade Event elements that must be placed on hardscape, including without limitation portable restrooms, so that all event components remain inside the gated area. The Conservancy may expand the fence in this manner only if the path on the opposite side of the Promenade remains open to the public and is in full compliance with the Americans with Disabilities Act, including without limitation being wheelchair accessible.
- 2.2.6 Promenade Events may continue beyond 11:00 p.m. provided that attendees leaving the Event walk directly from the Promenade to the Piedmont Park parking deck and then leave the Park. The Conservancy understands and will notify organizers of Promenade Events that any attendee who enters the Park after 11:00 will be subject to arrest for violation of the City's park hours law, set forth in City Code of Ordinances section 110-60(a).
- 2.2.7 The Conservancy must submit a security plan to the Atlanta Police Department for each Promenade Event, and must obtain approval of the security plan prior to the commencement of the Promenade Event. The Conservancy understands that it will be required to have off-duty POST-certified law enforcement officers present for some Promenade Events, including without limitation events that end later than 9:00 p.m., that have organizers performing take-down activities later than 11:00 p.m., or that include exchange of money on the Premises. Though the Promenade Event is not an Outdoor Festival, the Atlanta Police Department will determine the number of officers that must be present (if any) based upon the criteria set forth in Atlanta Code of Ordinances section 142-55(g). The Conservancy shall provide the required coverage at no cost to the City.



## 2.3 Restrictions on Use of Premises

- 2.3.1 As required by the City, the Conservancy shall keep the Promenade fenced, closed and securely locked, in a manner reasonably acceptable to the Commissioner. The City shall pay for the initial Promenade fencing and installation thereof. After initial installation, the Conservancy shall be responsible for all repair and maintenance of the fence except to the extent that the need for repair arises from the negligence or intentional misconduct of the City, including the City's officials and employees. The Promenade shall be closed to the public at all times unless the Conservancy is granted advance written permission from the Commissioner to open it. The City, and not the Conservancy, shall be responsible for enforcing City ordinances that prohibit entering gated areas of parks without permission, including without limitation Atlanta Code subsections 110-59 (a)(24) and (a)(25).
- 2.3.2 The Conservancy shall authorize use of the Promenade by third parties (individuals or entities) only after the third party has entered into an executed rental agreement with the PPC for said use, and only during the times authorized by the rental agreement.
- 2.3.3 All Promenade Events must require attendees to possess either an invitation or a ticket to gain admission.
- 2.3.4 The Conservancy shall not issue permits regarding the Promenade or any other portion of the Greensward for outdoor festivals, large gatherings, assemblies, or any other outdoor events that are regulated by Chapter 142 of the City Code of Ordinances.
- 2.3.5 The Conservancy shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon, which will create a nuisance; or allow any sale by auction at the Leased Premises (but auctions and private auctions as part of fund-raising events are expressly permitted); or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; or do or permit to be done anything in any way tending to injure the reputation of the City or the appearance of the Premises or the Park.
- 2.3.6 Except where specifically noted, this Agreement does not negate the Conservancy's need to fulfill all statutory and regulatory requirements pertaining to activities occurring on the Promenade, including without limitation obtaining a permit for erection of a stage and for installation of tents larger than 10 feet by 10 feet, and



complying with all alcohol regulatory statutes. The Conservancy is responsible for being aware of and complying with these laws.

2.3.7 The Conservancy shall not abandon the Leased Premises at any time during the term hereof; and, if the Conservancy shall abandon, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to the Conservancy and left upon the Leased Premises and any or all of the Conservancy's improvements and facilities thereon shall, at the option of the City, be deemed to be abandoned by the Conservancy and shall, at the option of the City, become the property of the City.

#### 2.4 Event Rentals/Signage/Service Agreements

2.4.1 The Conservancy shall have the right, without the prior approval of the City and without any review of the agreements by the City, to enter into Promenade Event leases, licenses, rental agreements, catering agreements and other similar agreements with third parties in connection with Promenade Events.

2.4.2 The Conservancy shall have the right, subject to the approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed, to install identification and way-faring signage for the Promenade in the Park.

2.4.3 The Conservancy shall have the right, without the prior approval of the City and without any review of the agreements by the City, to enter into agreements with third parties to provide services to the Promenade which the Conservancy is obligated or elects to provide (e.g landscaping, paving, and fencing contracts), except as set forth in Section 7.1 below.

### 3. Term

#### 3.1 Term Length

The Term of this Agreement shall commence on the date that it is executed, as set forth in the first paragraph hereinabove, and shall continue for five years. Upon mutual agreement of the Parties, the Parties may renew this MOU for two additional five-year terms.

#### 3.2 Inspection of the Premises Prior to Expiration of the Term

A walk through inspection of the Premises shall be made by the Commissioner or her/his designee and a representative of the Conservancy prior to the expiration or



termination of this Agreement, for the purpose of noting deficiencies in the maintenance of the Premises. The Conservancy shall correct or repair any and all deficiencies noted during such inspection within thirty days.

### 3.3 Surrender of Premises

The Conservancy shall yield and deliver peaceably to the City possession of the Premises and, to the extent required hereunder, the Premises' Improvements, at the end of the Term of this Agreement, whether such end occurs by termination, expiration, or otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Term except for reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Agreement. The Conservancy shall surrender the Premises and appurtenances thereto in clean and safe condition, and in good repair. All keys to the Premises shall be delivered to the Commissioner by the Conservancy. The Commissioner shall reasonably determine whether the Premises is clean and in good repair, and if s/he determines that it is not, the Conservancy shall remedy the situation as set forth in section 3.2 above. The Conservancy can take personal property, provided that the same is removed within thirty days.

## 4. **Rental Amount and Income from Premises**

### 4.1 Rent

The Conservancy shall not owe monthly rent to the City. In exchange for a waiver of monthly rent, the Conservancy shall operate and manage the Leased Premises as set forth in this Agreement. All costs associated with managing and operating the Premises shall be the responsibility of the Conservancy, except where stated otherwise in this Agreement and subject to the Conservancy's rights in Section 6.1.

### 4.2 Income from Premises

The Conservancy shall have the right to retain any and all income, fees, revenues and other amounts derived from the management and operation of the Premises, from whatever source, including but not limited to services, rentals, event fees, and event food and beverage sales, provided that the uses, management and operation are consistent with section 2.1 above and the other provisions of this Agreement. The Conservancy shall apply any amounts retained pursuant to this Paragraph 4.2 to (i) operating expenses incurred by the Conservancy with respect to the Greensward, including without limitation repair, maintenance, and improvement thereof; (ii) projects for the renovation, restoration and beautification of other segments of Piedmont Park; (iii) expenses incurred from the Conservancy's promotion of Piedmont Park; and (iv) such other expenses as may be incurred by the Conservancy in connection with its mission to enhance and preserve Piedmont Park.



## **5. Utilities**

The City shall maintain, repair and replace all utilities serving the Premises and pay all charges for utility services to the Premises promptly when due. The Conservancy hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, provided that such failures or interruptions were not occasioned by the City's fault or neglect.

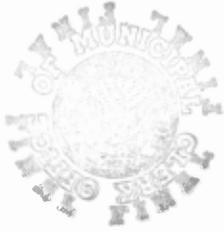
## **6. Maintenance of Premises**

- 6.1 The City and the Conservancy shall keep and maintain the portions of the Greensward for which it is responsible in good and sanitary order and repair and in good, safe, and presentable condition, consistent with the highest forms of business practices, all at no cost or expense to the other party.
- 6.2 Except as otherwise set forth in section 6.9 below and elsewhere in this Agreement, excluding paragraph 6.5 below, the Conservancy shall be responsible for all repairs and maintenance of the Premises throughout the term of this Agreement, including the repair, maintenance and replacement (when necessary) of the infrastructure and amenities located on or serving the Premises (or any portion thereof), including without limitation: i) all structural components; and ii) all mechanical, electrical, and plumbing systems.
- 6.3 Except as otherwise set forth in sections 6.4, 6.5 and 6.9 below, the Conservancy shall be responsible for all repairs and maintenance of the remainder of the Greensward (other than the Premises) throughout the term of this Agreement, including the repair, maintenance and replacement (when necessary) of the infrastructure and amenities located on or serving the remainder of the Greensward (or any portion thereof), including without limitation: i) all structural components; and ii) all mechanical, electrical, and plumbing systems.
- 6.4 The Conservancy will be responsible for performing only routine, basic maintenance of the Fountain. The Conservancy will notify the City promptly upon learning of any Fountain repair or maintenance issue that may impede the public's use of the amenity.
- 6.5 Where an individual repair or maintenance (including routine maintenance) project is needed on any portion of the Greensward other than the Premises for reasons other than those set forth in section 6.9 below, and where the cost of the project exceeds what the Conservancy is able to fund, the Conservancy will consult with the Commissioner and determine what, if any, financial resources the City may contribute to the



needed project. If the City does not have adequate financial resources to pay for the entire project (as reasonably determined by the Commissioner), the Conservancy will decide whether it wishes to perform the project, taking into account any funds that the City may contribute toward the cost. If the project is not performed, the Commissioner shall have the right to close, make inaccessible, turn off, shut down or take other applicable action regarding the portions of the Greensward (other than the Promenade) negatively impacted by failure to perform the project, where the Commissioner reasonably deems such action to be advisable for protection of the public and/or property (including without limitation the Park and its amenities). Such City actions will have no impact upon this Agreement except to the extent that there are fewer items to repair and maintain; any change in repair and maintenance obligations directly resulting from the City's actions shall be memorialized in writing and signed by the Commissioner and the Conservancy. The City's actions will not be grounds for terminating this Agreement. The above provisions of this section 6.5 notwithstanding, the Conservancy shall be responsible for a repair, regardless of cost, to the extent that it is necessitated by the negligence or intentional misconduct of the Conservancy, including its officers, employees, volunteers, contractors, or anyone working pursuant to the Conservancy's direction.

- 6.6 The Conservancy's specific maintenance responsibilities will include without limitation: turf care; litter removal; hardscape repairs and maintenance; landscape bed planting and maintenance; and routine fountain care as described in section 6.4 above. The City will provide daily routine trash service for the Premises and remainder of the Greensward, and may assist with other maintenance needs at its discretion based on available funding and operational schedules.
- 6.7 Subject to the last sentence of this Section 6.7, if after thirty (30) days written notice from the other Party, either Party fails to perform any of its maintenance or repair obligations required hereunder, the non-failing Party may, but shall not be obligated to, enter upon the Premises or any other portion of the Greensward and perform such maintenance or repair, and the failing party shall pay the cost thereof to the non-failing party upon demand. The provisions above notwithstanding, if such repairs or maintenance cannot be completed within said thirty-day period, and the failing party commences repairs within said thirty-day period and diligently pursues the same to completion, then the failing party shall not be in default and the non-failing party may not exercise its option herein.
- 6.8 Notwithstanding anything to the contrary set forth above in sections 6.2, 6.3, 6.4, 6.6 and 6.7, in the event that a repair or replacement is needed and (i) the repair or replacement is not needed due to the Conservancy's failure to perform previously any ongoing maintenance and repairs as



required above, (ii) the repair or replacement is not needed due to the negligence or intentional misconduct of the Conservancy, its officers, employees, volunteers, contractors, or anyone working pursuant to the Conservancy's direction; (iii) the estimated cost of the repair or replacement exceeds \$50,000.00, (iv) the net revenues from the operations of the Promenade are not sufficient to pay the cost of the needed repair or replacement, (v) the Conservancy, in its reasonable judgment, does not have other financial resources available to make the needed repair or replacement and (vi) after consultation with the Commissioner, the Conservancy has learned that the City does not have financial resources available to make the needed repair or replacement, then the Conservancy shall have the right, but not the obligation, to terminate this Agreement by written notice to the City, but, regardless of whether or not the Conservancy elects to terminate, if all of the conditions listed above in this Section 6.8 are met, the Conservancy shall have no responsibility or liability with respect to the needed repair or replacement.

- 6.9 The City shall be responsible for the cost of a repair needed on the Greensward, including the Premises, to the extent that the repair is necessitated by the negligence or intentional misconduct of the City, including its officials and employees. Nothing in this section 6.9 shall preclude the City from obtaining cost reimbursement from a third party.

## **7. Improvements**

The Conservancy hereby accepts the Leased Premises in its "as-is" condition. The City acknowledges that the Conservancy has completed improvements and installed equipment at the Premises required for the uses and purposes contemplated herein and pursuant to valid permits issued by the City ("Existing Improvements"). If the Conservancy desires to make any additional improvements to the Promenade in the future ("New Improvements"), any such New Improvements will be made by the Conservancy without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications therefor.

### **7.1 Contractors Hired**

In connection with any New Improvements, the Conservancy shall hire contractors who are acceptable to the City. In connection with any New Improvements, all contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as the City may reasonably require, and with endorsements described in Section 14/ Appendix B hereinbelow. In connection with any New Improvements, the Conservancy shall obtain all permits required by the City or other legal jurisdictions, as applicable, for all improvements to



the Premises, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

#### 7.2 Documentation of Improvements

The Conservancy shall furnish a set of As-Built Drawings to the Commissioner for any New Improvements within 90 days of completion thereof. Further, the Conservancy shall document the costs of its improvements in a form and detail satisfactory to the Commissioner and submit same within 30 calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of the leasehold improvements to be reimbursed to the Conservancy pursuant to Section 16.2 herein.

#### 7.3 Removal and Demolition

The Conservancy shall not remove or demolish, in whole or in part, any of the Existing Improvements or New Improvements upon the Leased Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of the Conservancy to replace the same by an improvement specified in such consent, but the Commissioner shall not withhold consent unreasonably and shall not impose unreasonable conditions on the consent.

#### 7.4 Title

Title to any and all New Improvements made by the Conservancy to or upon the Leased Premises shall pass to and be vested in the City upon completion of each improvement.

### **8. Trash and Refuse**

#### 8.1 Removal and Disposal

It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and the Conservancy shall arrange for such removal and disposal of same at its cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

#### 8.2 Storage Containers

Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened, pending their removal and disposal, and the Conservancy shall make certain that such storage does not generate odors, attract rodents or insects, or become offensive in any manner.



### 8.3 Deleterious Wastes

The Conservancy shall obey any and all applicable laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems and the required treatment of those products. In the event that the Conservancy violates this provision, and, as a result, the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of the Conservancy to comply with this Subsection, then in such event, the Conservancy shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefor from the City, and in addition, the provisions set forth in the first paragraph of section 10.3 (Hazardous Substances Section) below, regarding the Conservancy's obligations to the City, shall apply. For purposes of this subsection 8.3, deleterious waste shall not include materials which are deemed hazardous materials, as set forth in section 10.3 below.

## 9. Encumbrances and Liens

The Conservancy shall not encumber its interest in the Leased Premises or in any improvements that it places therein by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of said encumbrances which have been consented to by the City, the Conservancy shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by the Conservancy, its employees, agents, sublessees, contractors and/or subcontractors. The Conservancy shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that the Conservancy may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

## 10. Compliance with Laws and Regulations

### 10.1 General Compliance

The Conservancy shall not omit or fail to do anything, or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises on in any improvement erected thereon, which will in any way conflict with any law, ordinance, rule or regulation



required to be kept and observed by the Conservancy which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises.

#### 10.2 Drug-Free Workplace Policy

The Conservancy acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property and thus on the Premises. Violation of this provision, with knowledge of any of the Conservancy's officers, may result in immediate termination of the Lease by the City.

#### 10.3 Hazardous Materials

Except in compliance with all applicable requirements, (i) the Conservancy shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and stormwater drainage system serving the Premises and/or Piedmont Park and (ii) the Conservancy shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. The Conservancy hereby indemnifies the City from and against any breach by the Conservancy of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Conservancy, the City or others for whom the City may be responsible, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of the City by the Conservancy also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or in Piedmont Park which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on Premises caused or permitted by the Conservancy results in any contamination of the Premises or Piedmont Park, the Conservancy shall promptly take all actions at its sole expense as are necessary to return the Premises and Piedmont Park to the condition existing prior to the introduction of such Hazardous Material to the Premises; provided that the City's approval of such actions, and the contractors to be used by the Conservancy in connection therewith, shall first be obtained.



As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority having jurisdiction over the Premises, or the United States Government. The term “Hazardous Material” includes, without limitation, any material or substance which is (a) defined as a “hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste” or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a “hazardous substance” pursuant to Section 311 of the Federal water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903), or (d) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601).

## 11. Non-Discrimination

- 11.1 The Conservancy shall not discriminate based upon race, creed, color, religion, gender, national origin, domestic relationship status, familial status, marital status, parental status, age, disability, political affiliation, sexual orientation, or gender identity in the implementation of this Agreement.
- 11.2 By execution of this Agreement, the Conservancy certifies that, during the term of this Agreement, it shall be bound by and comply with the following statement:

"We the supplier of goods, materials, equipment and/or services covered by this Agreement shall not discriminate against any volunteer, employee, contractor/subcontractor, any person associated with any contractor/subcontractor, or any applicant for any of the above, because of the race, creed, color, religion, gender, national origin, domestic relationship status, familial status, marital status, parental status, age, disability, political affiliation, sexual orientation, or gender identity of such person."

As used here, the words ‘shall not discriminate’ shall mean and include without limitation the following: Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated."

- 11.3 The Conservancy shall incorporate a copy of the nondiscrimination statement set out in section 11.2 above in each and every contract with



each and every contractor and/or subcontractor of any tier, and shall require each and every contractor and subcontractor of any tier to comply with all such requirements.

- 11.4 The Conservancy's treatment of Promenade renters and potential renters, including without limitation the decision of whether to rent the Premises, the amount of rental fee to charge, and the rules and conditions to apply to the rental, shall not be changed, modified or influenced by the race, creed, color, religion, gender, national origin, domestic relationship status, familial status, marital status, parental status, age, disability, political affiliation, sexual orientation, or gender identity of the renter, the potential renter, or the people affiliated with or the potential participants of the Promenade Event being considered.

## **12. Transfer of Title or Rights**

The Conservancy shall not sell, assign, or transfer this Agreement, or any portion thereof, without the prior written consent of the City. The City shall have the right to charge a rental rate up to fair market value at the time of any assignment or transfer. No assignee for the benefit of the Conservancy's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Agreement by virtue of this paragraph. Nothing in this provision shall be deemed to override the Conservancy's rights to enter into rental agreements, licenses and other agreements for Promenade Events as permitted by Sections 2.1 and 2.4 of this Agreement.

## **13. Liability, Indemnity, and Insurance**

### **13.1 City's Liabilities**

Except as described in Section 13.2(b) below, the City shall not in any way be liable or responsible for any loss or damage or expense that the Conservancy may sustain or incur in its occupancy and use of the Premises.

### **13.2 Indemnification and Hold Harmless**

#### **(a) Releases and Indemnification:**

The Conservancy hereby releases and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law



or equity, and expenses of every kind or nature, whether arising before or after (with respect to events that occur during the Term of this Agreement) the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of the Conservancy, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement.

(b) Negligence and Waiver

The Conservancy's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to the extent that the liability is caused by the willful misconduct or negligence of the party released, indemnified, or held harmless. The Conservancy specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute. The Conservancy further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement.

13.3 The Conservancy shall require each contractor or subcontractor that performs any work related to the Leased Premises to comply with the indemnification provisions set forth in this section 13 and to comply with the insurance requirements set forth hereinbelow in Section 14/ Exhibit D.

13.4 This Section 13 shall survive any termination or expiration of this Agreement.

**14. Insurance and Bonding Requirements**

The insurance and bonding requirements for this Agreement are set forth in an addendum which is attached hereto and incorporated herein by reference.

**15. DEFAULT BY THE CONSERVANCY**

15.1 Events of Default

The Conservancy shall be in default under this Agreement if:



#### 15.1.1 Failure to Abide by Terms of this Agreement

The Conservancy shall fail to keep, perform, or observe any material term, covenant, or condition of this Agreement to be kept, performed, or observed by the Conservancy and shall not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or, if such failure cannot be cured within said thirty (30) day period, the Conservancy fails to commence such cure within that period and thereafter to diligently pursue same to completion. The thirty (30) day cure period shall not apply to violations set forth in section 10.02 above nor in sections 15.1.2 nor 15.1.3 below.

#### 15.1.2 Abandonment of Premises

The Conservancy abandons the Premises for thirty (30) days or more.

#### 15.1.3 Misrepresentation

The Conservancy intentionally and willfully misrepresents to the City any material fact regarding its ability to enter into this Agreement.

#### 15.1.4 Force Majeure

The Conservancy shall not be in default if its failure to comply with the material terms of the Agreement or its abandonment of the Premises is reasonably caused by an incident of force majeure, as defined in Section 16.1.3 below.

### 15.2 City's Remedies

If default is made by the Conservancy, as described in section 15.1 above, the City may terminate this Agreement upon written notice to the Conservancy.

#### 15.2.1 Possession

Without any showing of need or the presence of any statutory or common law grounds, all of which requirements are hereby expressly waived by the Conservancy, upon termination of this Agreement by the City due to the Conservancy's default, the City may take possession of the Premises, exclusive of inventory and personal property, and re-let all or any portion thereof.



### 15.2.2 Other Remedies

The City may exercise any and all other rights or remedies available at law or in equity, including, without limitation, the right to obtain restraining orders, injunctions, and decrees of specific performance.

## 16. Default by the City

### 16.1 Events of Default

The City shall be in default under this Agreement if:

#### 16.1.1 Premises not Available to the Conservancy

The City shall deprive the Conservancy of its right to occupy and use the Premises in accordance with the terms of this Agreement for a period in excess of ten (10) calendar days (except that this provision shall not entitle the City to utilize the Premises for City Events or City-Sponsored Events, and the City's sole rights regarding the same shall be as set forth in Section 22 below).

#### 16.1.2 Failure to Abide by Lease Terms

The City shall fail, after receipt of thirty (30) days prior written notice from the Conservancy, to keep, perform, or observe any material term, covenant, or condition of this Agreement to be kept, performed, or observed by the City.

#### 16.1.3 Force Majeure

The City shall not be in default where inability to use the Premises results from an incident of force majeure that causes the whole or a substantial part of the Promenade to be unavailable or unsafe for use. In addition, the City shall not be in default if its failure to comply with the material terms of the Agreement is reasonably caused by an incident of force majeure. Force majeure shall mean an incident or occurrence that is beyond the control of the Conservancy and the City, including without limitation severe inclement weather, riot or other acts of civil disobedience or threats to public safety, accidents, fires, floods, explosions, tornados or other acts of God.



## 16.2 The Conservancy's Remedies

If default is made by the City as described in section 16.1 above, the Conservancy may terminate this Agreement upon written notice to the City and, upon such termination, the Conservancy shall be entitled to receive from the City, within thirty (30) days of such termination, as its actual damages, an amount equal to the unamortized portion of the capital costs of any New Improvements, as documented by the Conservancy pursuant to Section 7.2 above, assuming such costs are amortized based upon a straight-line depreciation schedule over the Term of this Lease, with zero salvage value.

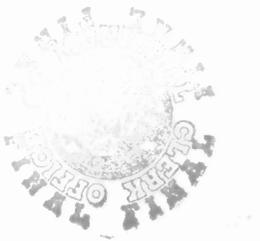
## 17. City Inspection of Premises

The City shall have the right, upon prior notice to the Conservancy, and at any reasonable time, to inspect the Leased Premises for the purpose of determining whether or not the Conservancy is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. In the event of an emergency, the City shall have the absolute right to take such action therein as may be required for the protection of persons or property. The Conservancy shall assure the City of emergency vehicle access to the Premises by providing the City with a key to the Promenade gates. The Conservancy shall also provide emergency telephone numbers at which the Conservancy or its agent may be reached on a 24-hour basis. The City will not inspect the Premises during a Promenade Event without prior Conservancy consent unless the Commissioner determines that it is reasonably necessary to do so for protection of public safety and/or property. In such instance, the City's employee or representative shall be obligated to minimize any disruption to the Promenade Event.

## 18. Use of Fountain Landing

18.1 The Conservancy may close the Fountain Landing for a cumulative total of no greater than four events per calendar year, which may not exceed a cumulative total of thirty (30) days of closure each calendar year. Closure of the Fountain Landing shall be for the sole purpose of sponsoring one or more "gated ticketed events", as defined in Atlanta Code of Ordinances Chapter 142. The Conservancy may not close the Fountain Landing pursuant to this section 18.1 between Memorial Day and Labor Day. During those days where the Conservancy closes the Fountain Landing, it may also close any other portion(s) of the Greensward to accommodate the gated ticketed event, including without limitation the Promenade.

18.2 Each of the gated ticketed events must be executed entirely by the Conservancy, its contractors and/or consultants. Each must be fully



financed by the Conservancy and/or sponsors obtained by the Conservancy.

- 18.3 The Conservancy may not issue a permit and/or charge a fee for use of the Fountain Landing, and cannot authorize an outdoor event to occur on the Fountain Landing.
- 18.4 The Conservancy may retain all net revenue from each of the gated ticketed events held in accordance with the provisions of this Article 18. The Conservancy must use the net proceeds from each of the Gated Ticketed Events for the maintenance and/or improvement of Piedmont Park, including without limitation the Greensward. No fees may be charged for use of the Fountain Landing except for the entrance fees paid by attendees of a gated ticketed event and vendor fees paid by entities selling goods and/or services at a gated ticketed event.
- 18.5 The Conservancy must meet all of the City's requirements for gated ticketed events, except that it will not be required to pay an event fee. Requirements include receiving approval of the event dates and an event permit from the Commissioner (where said dates and permit shall not be unreasonably denied, withheld or delayed), creating a security plan that is approved by the Atlanta Police Department, and creating an emergency services plan that is approved by the Fire Rescue Department. In addition, the Conservancy must comply with all other applicable City, County, State and Federal laws.
- 18.6 Pursuant to Section 1 above, the City will not allow reserved or permitted use of the Fountain Landing except as set forth in this Section 18.

**19. Waivers**

No waiver by either of the Parties at any time of any of the terms, conditions, or covenants of this Agreement, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy, or privilege of either of the Parties shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to each of the Parties by this Agreement are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided by law except as specifically provided herein, and the exercise of one right, power, option, or remedy, by either of the Parties, shall not impair its right to any other right, power, option, or remedy, except as specifically provided herein.



## **20. Entire Agreement**

The Parties anticipate executing a Piedmont Park Conservancy Operating Agreement (“*Operating Agreement*”) in the near future. The Operating Agreement will provide general terms that apply to numerous Piedmont Park facilities operated and managed by the Conservancy, including the Promenade. At the time that the Operating Agreement is executed and made effective, if this Agreement is incorporated into the Operating Agreement by reference, but there will be no terms in the Operating Agreement that, with respect to the Promenade, will be inconsistent with the terms herein. This Promenade Lease Agreement will remain in effect until it expires or until it is terminated pursuant to Section 15 or 16 above. Therefore, with the exception of the Operating Agreement at the time that it takes effect, this Agreement represents the entire and integrated Agreement between the Parties and may be amended only by written instrument signed by both Parties, and said instrument must be authorized by appropriate City legislation. This Agreement does not supersede the MOU executed between the Parties in 2012, and the MOU shall remain in full force and effect according to the provisions set forth therein.

## **21. Miscellaneous Provisions**

### **21.1 Usufruct**

The rights of the Conservancy hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

### **21.2 Recording**

The City and the Conservancy may record this Agreement, any memorandum or short form of this Agreement, or any affidavit with respect to this Agreement, as a public record document in the appropriate office. The recording of this Agreement does not grant an estate in the Premises.

### **21.3 Severability**

21.3.1 Except as set forth in Section 21.3.2, if any clause or provision of this Agreement is declared illegal, invalid or unenforceable under present or future laws effective during the Term of this Agreement, then, in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this 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.

21.3.2 Should Section 1 of this Agreement be declared unlawful, unconstitutional, or unenforceable under present or future laws effective during the Term of this Agreement, either Party shall have the right to terminate this Agreement, and such termination shall be at no cost to either of the Parties.

#### 21.4 Exhibits and Attachments

All exhibits, attachments, riders, memoranda of understanding, and addenda referred to in this Agreement are incorporated into this Agreement and made a part hereof by reference for all intents and purposes.

#### 21.5 No Joint Venture

The City and the Conservancy are not and shall not be deemed to be, for any purpose, partners or joint-venturers with each other.

#### 21.6 Conservancy Employees and Volunteers

Any volunteers utilized or personnel employed by the Conservancy or working at its direction, or any personnel serving the Conservancy's operation of the Premises, shall be volunteers or employees of the Conservancy (or of the independent contractors hired by the Conservancy) and shall not be deemed volunteers or employees of the City. The Conservancy shall remain responsible for the supervision, management and control of such personnel and any payroll, taxation or other employment obligation incident to their engagement.

#### 21.7 Time of the Essence

Time is expressed to be of the essence with regard to each provision of this Agreement.

#### 21.8 Successors and Assigns

Each and all of the terms, conditions, and covenants of this Agreement shall extend to and bind and inure to the benefit of the City and the Conservancy, and the legal representatives, successors, and assigns of either or both of them.



## 21.9 Notices

All notices required to be given to the Conservancy hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

Piedmont Park Conservancy, Inc.  
P.O. Box 7795  
Atlanta, Georgia 30357-0795  
Attn: President/CEO

or such other address as may be designated by the Conservancy by written notice to the City. All notices required to be given to the City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: Commissioner, Department of Parks,  
Recreation and Cultural Affairs  
233 Peachtree Street  
Suite 1700, Harris Tower  
Atlanta, Georgia

or such other address as may be designated by City by written notice to the Conservancy.

No notice shall be effective if purported to be transmitted by email, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

## 21.10 Interpretation

The language of this Agreement shall be construed according to its fair meaning, and not strictly for or against either the City or the Conservancy. This Agreement shall be construed and performed according to the laws of the State of Georgia. The references to days shall mean calendar days unless otherwise stipulated.

## 21.11 Table of Contents and Section Headings

The table of contents and section headings contained herein are for the convenience of reference by the City and the Conservancy and are not to be used to construe the intent of this Agreement or any part hereof, nor to



modify, amplify, or aid in the interpretation or construction of any of the provisions hereof.

#### 21.12 Surrender and Merger

The voluntary or other surrender or termination of this Agreement by the Conservancy, or a mutual cancellation hereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Premises, or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

#### 21.13 Holding Over

Should the Conservancy hold over said Premises after this Agreement has terminated in any manner, during such holding over the Conservancy shall be deemed merely a tenant at sufferance, but otherwise on the same terms and conditions as herein provided.

21.14 The Conservancy shall maintain records and accounts in connection with the performance of this Agreement that will accurately document all funds received by the Conservancy and all costs incurred by the Conservancy, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this Agreement (including any renewals thereof) unless otherwise specified by applicable law. The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit the Conservancy's records and accounts. Any such audit will be commenced within one year of the expiration of this Agreement, including any renewal thereof.

### **22. City Events and City Sponsored Events**

22.1 Upon written request of the Commissioner or any designee whom the Commissioner has authorized in writing to act on the Commissioner's behalf with respect to such request (each, an "Event Request"), the Conservancy will use commercially reasonable efforts to schedule any City Event (an event held by the City in its normal course of business) or any City-sponsored event (as defined in City Code of Ordinances section 142-2(h)) respectively a "City Event" or a "City Sponsored Event") in the Premises, subject to the terms and conditions of this Agreement. The City recognizes that the Conservancy has an established and active program for scheduling special events in the Premises, and that reservations for such special events are often made well in advance of the applicable event date. Therefore, the City acknowledges and agrees that the Conservancy is under no obligation to re-schedule existing reservations for any City Event



or City Sponsored Event. The City shall have no right to schedule or hold any City Event or City Sponsored Event in the Premises without the Conservancy's prior approval. The prior approval shall not be unreasonably withheld or delayed, though the Parties agree that the Conservancy shall have the right to disapprove any City Event or City Sponsored Event where the Leased Premises is subject to an existing reservation, and such disapproval shall be deemed reasonable.

22.2 Should the Conservancy approve a particular City Sponsored Event, the Conservancy may in its sole discretion, after consultation with the Commissioner, waive or allow discounts off the standard rental fee. There shall be no rental fee charged for City Events. Regardless of the rental fee charged to the City, if any, the City shall reimburse the Conservancy for any and all out-of-pocket costs reasonably incurred in facilitating and managing such City Event, and specifically cleaning fees, set-up and take-down charges, and restoration costs if any. The Conservancy may not charge the City for any other type of out-of-pocket costs unless the Commissioner approves such costs in writing prior to the subject event. The provisions of section 21.2 above shall not apply to this section 22.2.

22.2.1 All City Events, and City Sponsored Events meeting the definition of City Code of Ordinances section 142-2(h)(1), shall be subject to the Conservancy's standard rules and procedures regarding rental events on the Premises, except that (i) the City shall not be required to submit a security deposit; (ii) the City shall be responsible for any damages arising from its use of the Premises to the extent that those damages are caused by the City's negligence or intentional misconduct, but shall not be required to indemnify the Conservancy; and (iii) the City shall not be required to carry private insurance.

22.2.2 All City Sponsored Events meeting the definition of City Code of Ordinances section 142-2(h)(2) shall be subject to the Conservancy's standard rules and procedures regarding rental events on the Premises, including (i) payment of a security deposit, (ii) entering into the Conservancy's standard rental agreement which will include the event organizer's being responsible for any damages, claims or liabilities arising out of occurrences at the Premises during the applicable City Sponsored Event, and (iii) carrying insurance of the types and amounts generally required by the Conservancy to be carried by event users at the Premises.

23. The Conservancy, its agents, subcontractors, employees, volunteers or users shall not utilize the Leased Premises, or allow the Premises to be utilized for any overnight accommodations, sleeping, or residential uses in/on the Premises.



- 24. The Conservancy shall include City titles and designations of the Mayor, the Atlanta City Council, and/or the Commissioner when appropriate, as determined by the Commissioner, to identify Piedmont Park and/or the Promenade, and/or to reflect the ownership of Piedmont Park and/or Promenade by the City in connection with public relations notices, memoranda, and other publicity as each relates to the Premises.
- 25. The Conservancy shall notify the Commissioner within three hours or sooner of learning of any emergency event regarding or arising in Piedmont Park and/or the Premises that involves the media, the police or fire departments or emergency medical services.

**IN WITNESS WHEREOF**, the Parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:

CITY OF ATLANTA

\_\_\_\_\_  
Municipal Clerk

\_\_\_\_\_  
Mayor (SEAL)

ATTEST:

PIEDMONT PARK CONSERVANCY,  
INC.

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
President (SEAL)

RECOMMENDED:

\_\_\_\_\_  
Commissioner, DPRCA

APPROVED AS TO FORM:

APPROVED

\_\_\_\_\_  
Chief Counsel, Department of Law

\_\_\_\_\_  
Chief Procurement Officer