

INSTALLATION/MAINTENANCE AGREEMENT AT HARBOR PARK

This installation/maintenance agreement at Harbor Park ("Agreement") is made and entered into this ____ day of _____, 2018 by and between the City of Orlando, a municipal corporation organized and existing under the laws of the State of Florida ("City"), and the Sentry Management, Sentry Management, Managing agent for Baldwin Park Residential Owners Association, Inc. (Baldwin Park Joint Committee, Inc.)

RECITALS

A. City owns certain property located within Baldwin Park, on the west side of Lake Baldwin in Orlando, Florida, as more particularly shown in **Exhibit "A"**, attached hereto and incorporated herein, by reference (Park). The Park, known as Harbor Park, is approximately 1 acre of land in size.

B. Committee has requested to place a flag pole per City Policy 211.4.

C. The City hereby approves the request under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Committee agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

2. Term of License. The term of the License shall begin on the License Commencement Date and end five (5) years later unless extended or terminated as provided herein. The Committee must submit and obtain City-approved design drawings within twelve (12) months of this agreement and must complete construction within eighteen (18) months of the design approval. The License Commencement Date shall be the first day after construction completion and final acceptance of the proposed flag pole by the City.

3. Renewal of License. Provided that Committee is not in breach or default of this Agreement, the term of the License may be renewed for additional five year terms upon the mutual, written agreement of the parties. The Families Parks and Recreation Director is authorized to execute such renewals, under the same terms and conditions, on behalf of the City without further approval from the Orlando City Council.

4. Installation.

A. The flag pole shall be installed and incorporated into a public site within the section of the Park that has been agreed to and designated by the Committee and the City; such site is identified and described in **Exhibit "A"**, attached hereto and incorporated

herein by reference. To the extent that the City has a survey of the boundaries of the flag pole site or park, the City will provide same to the Committee. The Committee shall provide to the City, for the City's approval, a written description of the manner in which the Flag Pole shall be installed, including a statement of details addressing any site preparatory work which must be performed prior to installation.

- B. The City shall cooperate with the Committee prior to installation; however, it shall be the responsibility of the Committee to apply for, pay for, secure, and comply with the conditions and requirements of any permits that may be required by law for such installation. Committee shall allow City review and input into design of the flag pole, including wording and graphics on any signs planned as part of the flag pole, as described in 5c of this agreement. City will be consulted on how benefactors of the Flag Pole are displayed, if that is to be done. No advertising or overt logos/company names will be allowed. The (FPR Director) City has the right to approve or deny final designs.
- C. The Committee and the City shall consult and agree to the date and time for delivery of the flag pole to the site. The Committee shall be responsible for and bear the costs of transportation and installation of the flag pole, including but not limited to costs of permits, labor, and materials, and clean up of the site. Committee will also be responsible for any damages to existing structures, paving, utilities of other park or public facilities related to the construction and ongoing maintenance of the flag pole. This includes any damages to plants, irrigation, turf or lake quality.
- D. Preconstruction and installation shall not commence until all funding for purchase and installation is secured (as determined by City) and the flag pole final design and construction plans have been approved by the Parks Division Manager. City shall review and approve construction plans and methods, including but not limited to, materials, lay-down areas, access to site, and other items regarding installation. City shall be allowed to observe and provide input into construction process as it relates to impacts on the park or park visitors. Committee shall take every precaution to secure the site, materials, storage areas and equipment for the safety of park visitors, construction workers and park improvements to prevent damage or injury and shall require its contractor to do the same and to have the same liability insurance provide in Section 12 below.

5. Final Acceptance; Title of the Flag Pole to Vest in the City

Upon the substantial completion of the work and installation of the flag pole to the Committee's satisfaction, the City shall inspect the work and present the Committee with a detailed listing of any observed flaws. Committee shall repair flaws before final acceptance. During the construction of the flag pole, the Committee shall follow the Parks Division approved design and City-approved construction documents. An as-built survey of improvements made including, but not limited to, topography, under- and above-ground utility locations and hardscape shall be submitted to the City in electronic drawing file format (.dwg) prior to final acceptance. When the City is satisfied with the work, it shall provide written notice to the Committee of its final acceptance of the work, which notice shall state

that the work has been completed and the flag pole has been installed as agreed to by the parties and to the satisfaction of the City. Committee will provide City with information regarding manufacturers, model numbers, colors and other information used in the construction of the flag pole.

- B. Upon final acceptance, title to the flag pole shall pass from the Committee to, and vest in, the City. The Committee hereby donates and transfers to the City the Committee's rights except those limited by this Agreement, title, and interest in and to the flag pole. Thereafter, the City shall retain all written documentation regarding the flag pole, and shall have, for future and historical documentation purposes only, the right to a copy of all drawings, sketches and designs of the flag pole produced prior to final acceptance of the work.
- C. Upon final acceptance, the Committee shall be available for a public dedication of the flag pole; and, in consultation with and approval by the City, shall provide appropriate, on-site signage to identify the flag pole by the Committee's name, the year of fabrication, and other information deemed appropriate by the City.

6. Maintenance, Repair, and Restoration

- A. Committee shall be responsible for the maintenance and repair of the flags, flag pole, cable pulleys, lights, signage and any other items affected by installation. Committee shall maintain the portions of the flag pole that are its responsibility in a good, safe and sanitary condition throughout the term of this Agreement. Committee shall insure that no pests, vermin, or noxious odors be caused by the flag pole and therefore interfere with the use and enjoyment of the Park by the public. Responsibilities for maintenance is as follows: City agrees that if City has design and construction input and the flag pole is constructed according to agreed-upon plans, City will be responsible for the normal day-to-day maintenance of the grounds, sidewalks and hardscape that existed prior to the flag pole addition. Committee will be responsible for providing the flags; raising/lowering the flags; positioning flags at half-mast for required lengths of time when necessary; replacing flags before they deteriorate - a minimum of once per year prior to Memorial Day- and more frequently if needed; and fundraising and setting up an escrow account in perpetuity to pay for maintenance items for which Committee is responsible, as well as for large repairs of up to \$1,000 per calendar year, replacements, insurance deductibles and other extraordinary expenses required for the maintenance of the entire flag pole. In case of the need for large repairs beyond normal wear and tear, for large single repairs costing more than \$1,000, the Committee and the City will meet and determine a plan of action regarding the repairs.

B. City shall be entitled to inspect the flag pole from time to time and notify Committee in writing of any items in a state of disrepair. Committee shall have sixty (60) days from its receipt of the notice to repair the items that are Committee's responsibility. If the flag pole conditions of disrepair are a safety hazard to the public as determined by the City's Risk Management Division, the Committee or the City shall reserve the right to temporarily close the area around the flag pole to the public for repair within thirty (30) days of notification of such condition(s) and during the duration of the repair as required. Provided however, the Committee shall take no longer than sixty (60) days to repair the flag pole or correct a safety issue without written permission from the Parks Division Manager. The failure of Committee to repair the items within such time period shall be a breach of this Agreement and may result in removal of the flag pole from the Park at the City's discretion. The failure of City to provide a list of repairs to Committee shall not relieve Committee of its maintenance and repair obligations.

C. Other than routine maintenance, the Committee may not make any alterations to the flag pole and its related improvements without prior written approval of the Parks Division Manager.

7. Utilities. Committee shall be responsible for arranging and paying for the cost of all utilities related in any way to the flag pole. No flame or fuel is allowed on site except in/and during ceremonies.

8. Use and Operation. For the duration of the flag pole's placement on City property, Committee shall be solely responsible for raising and lowering of the American and any other flags. The City's Policy and Procedures 211.4 on inclusion of flags on flag pole must be complied with and the raising, lowering, maintenance and replacement of all flags included in a memorial are the responsibility of the Committee and shall be displayed in conformance with Federal and State policies as stated in the United States Code, Chapter 1, Title 4 "U.S. Flag Code" and the State of Florida Division of Administrative Services "Flag Protocol and Display."

9. Use of Park.

The Park is available for use by the general public for public events, in City's sole and absolute discretion. In order to utilize the Park, the Committee must contact the Parks Division Manager sixty (60) days in advance of any planned event and submit an application for use of the Park in conformance with the then current park reservation procedures. The Committee shall be responsible for paying the normal and customary fees for using the Park unless those fees have been waived by the Families, Parks and Recreation Department Director in accordance with City policy.

10. Termination. This Agreement may be terminated:

- A. By Committee for any reason upon thirty (30) calendar days prior written notice to City; or
- B. By City for any reason upon thirty (30) calendar days prior written notice to Committee.
- C. Upon termination by either party for any reason, Committee shall remove the flag pole as soon as reasonably possible at its sole cost and expense, but in any event no later than ninety (90) days after termination.
- D. If the Committee opts not to exercise its right to remove the flag pole as provided in 10 C. above, City may elect to keep the flag pole improvements as part of its Park amenities, move them to another location or remove them and dispose of them in whatever manner it sees fit. In the City's discretion, it may elects to keep the flag pole on public display. In the event that City elects to retain the flag pole, Committee shall have no further right, title or interest therein. Should City so desire, Committee shall provide appropriate documentation to City confirming its conveyance to City of all right, title and interest in the flag pole improvements.

11. Indemnification. Committee hereby agrees to indemnify, defend and hold harmless without limit the City, its elected and appointed officials, agents, employees from and against any and all liabilities, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with this Agreement, including but not limited to the Committee's negligence in the design, construction, operation, maintenance or repair of the flag pole. The City shall be responsible for its own negligence.

12. Insurance

- A. Committee, at its own expense, shall keep in force and at all times maintain through the period of construction and installation until acceptance of the flag pole by the City and during any repair periods performed by the Committee or its contractors, Commercial General Liability Insurance with limits of not less than One (1) Million Dollars (\$1,000,000.00) per occurrence and Two (2) Million Dollars (\$2,000,000.00) annual aggregate, for Bodily Injury (BI) and Property Damage (PD).
- B. City shall be named as an Additional Insured on the insurance policy/(ies) required hereunder.
- C. Committee shall provide City Risk Manager with a Certificate of insurance on the policy of insurance and renewals thereof, on an annual basis, in a form(s) reasonably acceptable to City.

- D. City reserves the right to waive or modify any aspect of the insurance requirements in this Agreement, including the addition of new types of coverage, as the result of reasonable and prudent risk management review of the activities upon or associated with the flag pole.
- E. Committee shall make its best effort to notify City in writing of any reduction, cancellation or substantial change in its insurance policy or coverage at least thirty (30) calendar days prior to the effective date of said action.
- F. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, who are licensed and authorized to do business under the laws of the State of Florida.

13. Copyright and Reproduction Rights

- A. The Committee expressly reserves every right available to the Committee under the Federal Copyright Act and other applicable statutes to control the making or dissemination of copies or reproductions of the flag pole, except the rights which are limited by this Agreement.
- B. The City retains the right to publish and distribute photographs, drawings or other forms of reproductions of the flag pole as installed and formally accepted by the City, for reference, promotional, educational and scholarly purposes. The City agrees to make no commercial use of the flag pole without the Committee's written consent. If such consent is obtained from the Committee, all reproductions of the flag pole by the City shall contain a credit to the Committee that states the Committee's name, year of creation, and the name of the City.
- C. The Committee agrees to include on or in any form of reproduction of the flag pole initiated or authorized by the Committee, a credit to the City, stating that the flag pole is owned by the City.
- D. Committee shall not use City's name or logo while advertising or promoting the flag pole within the Park without City's prior, written consent.

14. Compliance With Laws

- A. Committee shall comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the Park and the construction and installation of the Improvements pursuant to this Agreement, including, but not limited to, the Florida Building Code (FBC), and the Americans with Disabilities Act (ADA). The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Committee's sole responsibility.

B. This Agreement is contingent upon Committee's maintaining all certificates, permits, and other approvals that may be required by any federal, state, or local authority for the operation of the Licensed Premises and the construction of the improvements on the Licensed Premises. The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be Committee's sole responsibility.

15. **Condemnation.** In the event the Park is taken by eminent domain, this Agreement shall automatically terminate as of the date title to the Park vests in the condemning authority. Such taking shall operate to terminate this Agreement and the terms of Section 10 above shall apply. Committee shall not be entitled to any portion of the award paid for the taking and City shall receive the full amount of such award. Committee hereby expressly waives any right or claim to any portion thereof and all damages, whether awarded as compensation for diminution in value of the flag pole or Park, shall belong to City. City will inform Committee of the commencement of any eminent domain proceedings by any governmental authority.

16. **Notices.** All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to City, to: Parks Division Manager
 City of Orlando Parks Division
 1206 W. Columbia Street
 Orlando, Florida 32805

If to COMMITTEE, to: Managing Agent
 SENTRY MANAGEMENT
 Baldwin Park Residential Owners Association, Inc.
 Baldwin Park Joint Committee, Inc.

 1913 Meeting Place
 Orlando, FL. 32814

17. **Assignment/Subletting.** Committee shall neither assign this Agreement without the prior written consent of City, which may be withheld for any or no reason.

18. **Liens.** Committee shall insure that no liens or claims of liens are recorded against Park property due to the construction and installation of the flag pole by any party, and the recording of any such lien, unless removed within thirty (30) days of filing, shall be a default by Committee of this Agreement.

19. **Unlawful Discrimination.** Committee covenants and agrees that no person shall be unlawfully discriminated against in the design, construction, use and operation of the flag pole pursuant to this Agreement.

20. **No Partnership or Joint Venture.** Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between City and Committee.

21. Riparian Rights. Committee shall not acquire any riparian rights to Lake Baldwin by virtue of this Agreement or its use of the Park.

22. Miscellaneous .

A. City and Committee represent that each, respectively, has full right, power, and authority to execute this Agreement and enter into this Agreement.

B. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein

C. This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be Orange County, Florida.

D. City is a Florida municipal corporation whose limits of liability are set forth in Section 768.28, Florida Statutes, and nothing herein shall be construed to extend the limits of liability of City beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of City's sovereign immunity under Section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of City's obligations under this Agreement are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

SIGNATURES BEGIN ON NEXT PAGE

CITY OF ORLANDO, FLORIDA

By: _____

Mayor / Pro Tem

Attest:

Executed on _____ 2018

Denise Aldridge, City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only.

_____, 2018

Chief Assistant City Attorney

**SENTRY MANAGEMENT, MANAGING AGENT FOR BALDWIN PARK
RESIDENTIAL OWNERS ASSOCIATION, INC.
(BALDWIN PARK JOINT COMMITTEE, INC.)**

By: _____

Name: _____

Title: _____

Witnesses:

(1) Sign Name: _____

Print Name: _____

(2) Sign Name: _____

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of Sentry Management, Managing Agent For Baldwin Park Residential Owners Association, Inc. (Baldwin Park Joint Committee, Inc.), on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Notary Public

Commission Expires: _____