

Minutes of the Special Meeting of the Albuquerque Press Club Board of Directors:

Date: 03 / 06 / 2015

Members Present:

- President: Thom Wright
- Vice President: Kouri Antinone
- Secretary: David Donaldson
- Treasurer: Cynthia Stepleton
- Manager: Maynard Cowan

- Director:
- Director: Steve Satchwell
- Director: Erin Debenport
- Director: Ken Hargis
- Director: Jim Riordan
- Director: Kristin Elliott

Also present: no one.

Call to order.

President: This is a special meeting called for a single purpose, to vote on the agreement that has been worked out between the APC and the City of Albuquerque regarding the park renovation which will change our parking. This agreement is the culmination of negotiations between the city and the APC. Right now we are probably in the strongest negotiating position we will have. Agreeing to this will result in our dropping our appeal of the LUCC decision

This agreement recognized our historic use of the parking and will give us something to lean on if we ever need it to maintain our ability to park in the park.

The agreement both benefits and burdens the APC and this is and will remain a lasting agreement between the city and the APC. It will change our operations, it will necessarily modify the job descriptions of the bartenders and the manager in a way that will put our burden on them to follow the rules we are agreeing to consistently.

Moved by Ken Hargis that the board approve the (written copy attached) agreement, as written, and that we give our President, Thom Wright, the authority to sign this long-term binding agreement.

Seconded by: Steve Satchwell

Discussion ensued.

Steve Satchwell wished it noted that though he approves the agreement as written and believes it is probably the best we could get, the portion that allows the city to cancel leaves him with some concern. Ken Hargis concurs. Would like the city to define what constitutes notification of intended use on our part.

Ken Hargis wished it noted that the agreement does not spell out details, many "what ifs." Thom Wright explained that when we get to the point of actually implementing the agreement, when the area is near completion, he will provide the city parks department with a questionnaire with prior board input, so we can have definitive answers to those possible situations. The results of that questionnaire will be an addendum to our agreement.

Question called

Votes For:
Cynthia Stepleton
Jim Riordan
Ken Hargis
Steve Satchwell

Votes Opposed:
none.

There being no further business, the meeting is adjourned.

Prior to the special meeting, all board members were provided with copies of the agreement and some emails between our president and our attorney that documented our attorney's beliefs about the possibility of getting anything better. Some of the members who could not attend the meeting emailed their comments to all the board members prior to that meeting. There were no board members who voiced opposition. Those who emailed their support include: David Donaldson, Kristin Elliott, and Erin Debenport.

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of March, 2015, by and between the City of Albuquerque, New Mexico, a municipal corporation (hereinafter referred to as the "City"), and the Albuquerque Press Club (hereinafter referred to as "APC"), a nonprofit corporation.

WHEREAS, the Albuquerque Press Club owns the Whittlesey House which is a landmark and contributing building in the Hunning Highlands Historic zone; and

WHEREAS, the APC operates the Whittlesey House in a manner consistent with the continuing restoration and renovation of the historic structure and parking and large truck access is a necessary component of these operations; and

WHEREAS, adequate parking for Highland Park and neighboring buildings including the Whittlesey House had been available on Elm Street prior to the closure of the south portion of Elm in the 1980s; and

WHEREAS in the 1980s the City proposed removing the south portion of Elm Street which would significantly reduce parking and access to the Whittlesey House; and

WHEREAS, the Albuquerque Press Club expressed concern with the removal of the south portion of Elm and the City agreed to construct a parking lot which has provided adequate public parking; and

WHEREAS, the Albuquerque Press Club maintains that the parking provided by that lot has been essential to its operation but acknowledges that it has no contractual right that the City maintain that parking lot; and

WHEREAS, the City is renovating Highland Park, and consistent with the Highland Park Master Plan & Renovation, is renovating an existing parking lot and replacing it with a multi-use area that can accommodate parking and be used for other events and activities while also be closed during certain hours in order to discourage inappropriate activities in the park; and

WHEREAS, access to the multi-use area will be restricted by bollards that can be lowered with a key; and

WHEREAS, APC has many events when the need for parking for members and guests exceeds that otherwise readily available, nearby; and

WHEREAS, the City does not have the staff to lower and raise the bollards whenever needed; and

WHEREAS, APC has requested that it be provided keys to the bollards so that it can lower them when needed;

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. APC acknowledges the following:
 - a. The multi-use area is public property and use thereof by the members or guests of APC is not exclusive;
 - b. The use of the multi-use area when the bollard(s) is/are down is not exclusive to APC, other members of the public, or other groups; and
 - c. The multi-use area should not be used after APC has closed, and the purpose and intent of this Agreement is to avoid having any cars remain in the multi-use area after the bollards are raised and locked.
2. APC agrees to the following:
 - a. To take reasonable precautions to insure the public is aware vehicles may be locked in by use of raising the Bollards, and to avert the public from entering the multi-use area during truck deliveries;
 - b. The bollard(s) will be opened only as needed for delivery access, overflow parking, or when requested by the City;
 - c. Not permit bollards to be unlocked overnight or immediately after delivery access;
 - d. Notify the City of scheduled use of the bollards in order to prevent any conflicts in scheduling the multi-use area; and
 - e. Notify the City on any observed damage to the bollards or multi-use area.
3. The City agrees to the following:
 - a. To maintain the multi-use area;
 - b. To also maintain the bollards;
 - c. To place signage at the entrance and exit of Highland Park to serve as notice of the following:
 - i. Overnight parking is not permitted and the area will be locked after 10:00 p.m.;
 - ii. Any vehicles remaining will be locked in, and may be towed at the vehicle owners expense;
 - iii. Contact information shall be provided for tow procedures;
 - iv. The hours during which Highland Park is open to public use
 - d. To provide APC with a key to the bollards; and
 - e. No preference will be given in scheduling the multi-use area.
4. **Term**. The Agreement is for one (1) year, and will automatically renew absent thirty day (30) notice by either party.
5. **Indemnity**. APC agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties due APC's or its contractor's or agent's negligence or failure to perform its duties under this agreement resulting in any injury or damage received or sustained by any person, persons or property arising out of or resulting from any actions or inactions performed by APC under this Agreement or by reason of any asserted , neglect or misconduct of APC its employees or agents or contractors. The

indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

6. **Insurance.** APC shall procure and maintain at its expense until Termination of the Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed by it or its agents. Before commencing the Agreement, APC shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico 87103, before a policy is cancelled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all coverages required other than professional liability or workers' compensation, the City shall be named an additional insured. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

A. **Commercial General Liability Insurance.** A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

\$1,000,000	Per Occurrence
\$1,000,000	Policy Aggregate
\$ 5,000	Medical Payments

Said policy of insurance must include coverage for all operations performed by APC under the Agreement and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

B. **Automobile Liability Insurance.** Not Required. APC does not own any vehicles.

C. **Workers' Compensation Insurance.** Workers' Compensation Insurance for its employees in accordance with the provisions of the Workers' Compensation Act of the State of New Mexico.

D. **Increased Limits.** If, during the term of this Agreement, the City requires the APC to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

7. **Compliance With Laws.** In performance of the Agreement hereunder, APC shall comply with all applicable laws, ordinances, and codes of the Federal, State and local governments.
8. **Changes.** The City may, from time to time, request changes in the Agreement to be performed hereunder. Such changes, which are mutually agreed upon by and between the City and APC, shall be incorporated in written amendments to this Agreement.

9. **Assignability.** APC shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment or novation).
10. **Suspension or Termination for Cause.** If, through any cause, APC shall fail to honor its responsibilities or obligations under this Agreement, the City shall thereupon have the right to suspend access to use of the bollards or terminate this Agreement by giving written notice to the Contractor of such suspension or termination and specifying the effective date thereof at least five (5) days before the effective date of such suspension or termination.
11. **Termination for Convenience of City.** The City may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to APC.
12. **Construction and Severability.** If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
13. **Enforcement.** APC agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.
14. **Entire Agreement.** This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
15. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.
16. **Approval Required.** This Agreement shall not become effective or binding until approved by the Director of the Parks and Recreation Department.

APC has expressed an interest in having access to power on one of the light poles in the multi-use area, in order to install a security camera to monitor activity from APC. If the City agrees then the City will provide electrical access for installation of cameras with a watertight receptacle. Any access hereby provided is subject to termination as provided herein.

ALBUQUERQUE PRESS CLUB

Approved by:

Title: _____

Date

Approved as to form:

_____ Date

Attorney for Lessor

CITY OF ALBUQUERQUE

Approved by:

Barbara Taylor, Director
Parks & Recreation Department

_____ Date