

**MAINTENANCE AGREEMENT  
BETWEEN  
LIBERTY POINT LLC  
AND  
CITY OF JACKSONVILLE**

**THIS MAINTENANCE AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between LIBERTY POINT LLC, a Florida limited liability company whose address is 400 East Bay Street, Suite 2, Jacksonville, Florida 32202 (“LP”), and the CITY OF JACKSONVILLE, a municipal corporation and a political subdivision of the State of Florida, whose address is 117 West Duval Street, Ste. 400, Jacksonville, Florida 32202 (“City”).

**WITNESSETH:**

**WHEREAS**, City has been responsible for maintaining Public Improvement II at Berkman Plaza after it terminated its contract with DB Holdings, L.L.C. on November 4, 2016; and

**WHEREAS**, a maintenance agreement with a new vendor is necessary to ensure that Public Improvement II at Berkman Plaza is properly and regularly maintained; and

**WHEREAS**, City and LP wish to enter into a maintenance agreement under which LP shall provide maintenance services (the “Services”) for Berkman Plaza; now therefore

**IN CONSIDERATION** of the provisions contained herein and for other good and valuable consideration acknowledged by the parties to be sufficient, the parties hereby agree as follows:

1. **Recitals.** The above-stated recitals are accurate, true, and correct and are incorporated herein by this reference.

2. **Term.** The initial term of this Agreement shall commence on the Effective Date and shall expire on September 30, 2031, unless sooner terminated by either party in accordance with the terms of this Agreement. City and LP will have the option to renew this Agreement for up to fifteen (15) additional one-year terms. Notice of the request for an additional term must be given to City in writing at least ninety (90) days prior to the end of the then current term. Renewal of this Agreement is under all circumstances subject to an annual appropriation by City Council of the City Funds requested in the approved budget. If these funds are not appropriated, this Agreement may be terminated by either party.

3. **Scope of Services.** City and LP agree that the work to be performed by LP shall be limited to the specific items set forth in **Exhibit A**, attached hereto and made a part hereof by this reference, such specific items of work referred to as the “Work.” If any services, functions, or responsibilities not specifically described in **Exhibit A** are agreed by both parties to be necessary for the proper performance and provision of the Services, they shall be deemed to be implied in the Scope of Services as if specifically described therein.

4. **Compensation.** City agrees to pay LP for the Work compensation in the sums and in the manner as set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, subject to the availability of lawfully appropriated funds. Notwithstanding anything to the contrary herein, if City learns that any funds City is required to pay LP hereunder will not be available due to any non-appropriation of such funds, City shall within thirty (30) days after learning of such non-appropriation notify LP of such

non-appropriation, and this Agreement shall terminate as of the date that lawfully appropriated funds are no longer available to pay LP the amount that is owed hereunder.

5. **Maximum Indebtedness.** The City's Maximum indebtedness for FY21 is \$126,000.00. The City's payments to LP for Services under this Agreement shall not exceed the maximum indebtedness amount under this Agreement. The City makes no assurance that it will provide any funding or any level of maintenance or support to LP during the term of this Agreement in excess of funds appropriated, if any, for the Approved Budgets. Funding provided by the City during the Initial Term or any subsequent term is referred to herein as the "City Funds."

5. **Default.** In the event of any default or breach of the provisions hereof or any failure to perform any of the obligations hereunder, the party not in default shall be entitled to seek any remedies allowed by law or in equity. Each party shall be entitled to written notice of any default and shall have thirty (30) days from receipt of such notice to cure such default prior to the exercise of any remedy provided herein.

6. **Miscellaneous Provisions.** This Agreement is also subject to all of the following provisions, terms, and conditions.

a. **Notices.** Any notice or communication required or permitted hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address on the signature page of this Agreement or when received if delivered personally. Any address for notice may be changed by ten (10) days' prior written notice.

As to the City: City of Jacksonville  
Parks, Recreation and Community Services Department  
Attn: Director  
214 N. Hogan Street, 4<sup>th</sup> Floor  
Jacksonville, Florida 32202

With copy to: City of Jacksonville  
Office of General Counsel  
Attn: Corporation Secretary  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

As to LP: Liberty Point, LLC  
400 East Bay Street, Ste 2  
Jacksonville, Florida 32202

b. **Interpretation.** The parties hereto acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions hereof. The parties have equal bargaining power and intend the plain meaning of the provisions herein. In the event of an ambiguity in, or dispute regarding, the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman.

c. **Integration.** This Agreement contains the complete agreement between the

parties and cannot be varied except by the written agreement of the parties. The parties agree that there are no oral agreements, understandings, representations, or warranties that are not expressly set forth herein.

d. **Binding Effect.** This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, representatives, successors, and assigns.

e. **Dates and Time Periods.** Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday, or other legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday, or legal holiday.

f. **Non-waiver.** No delay or failure by either party to exercise any right hereunder and no partial or single exercise of such right will constitute a waiver of that or any other right except by written agreement executed by the parties or unless expressly provided otherwise herein.

g. **Governing Law.** This Agreement shall be governed and interpreted under the laws of the State of Florida.

h. **Headings.** The paragraph headings used in this Agreement are for convenience purposes only and shall not be used in the interpretation of this Agreement.

i. **Exhibits.** All exhibits attached hereto are incorporated herein and made a part hereof by this reference.

j. **Relationship of Parties.** Nothing contained herein is intended to create, nor shall it ever be construed to make, the City or LP partners or joint venturers.

k. **Severability.** The provisions of this Agreement are severable, and if any provision or part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or parts hereof to other persons or circumstances shall not be affected thereby.

l. **Assignment.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by LP without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned, or delayed.

n. **Obligations of the Parties in the Event of a Natural Disaster or Force Majeure.** In the event the Berkman Plaza or area in the immediate vicinity is closed and is rendered unsafe or impossible due to a natural disaster or force majeure, all obligations of the parties under this Agreement are suspended until such time as the area is opened again to the public.

[Remainder of page intentionally left blank. Signature page follows.]

**IN WITNESS WHEREOF**, the duly authorized officers of the City and LP have caused this Agreement to be executed the day and year first above written.

Signed, sealed, and delivered in presence of:

**LIBERTY POINT LLC**, a Florida limited liability company

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Greg Esterman, Managing Member

**ATTEST:**

**CITY OF JACKSONVILLE**

\_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

Encumbrance and funding information for internal City use:

Amount.....\$

In accordance with Section 24.103(e), of the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Contract; provided however, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent purchase order[s] as specified in said Contract.

\_\_\_\_\_  
Director of Finance  
City Contract # \_\_\_\_\_  
Purchase Order # \_\_\_\_\_

Form Approved:

By: \_\_\_\_\_  
Assistant General Counsel

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**Exhibit A**  
**Scope of Services-Berkman Plaza**

General: LP shall furnish all labor, materials, supplies, and equipment to maintain the provisions listed below. LP shall pay all operating expenses for the Berkman Plaza. "Operating Expenses" shall mean the total of all costs incurred by LP in relation to the maintenance of the Berkman Plaza area.

1. **Turf Care.** Grass height maintained according to species and variety of grass. Mowed at least forty-four times per year, hereinafter defined as a "Visit." Turf areas shall maintain dense, green turf coverage. Aeration as required, not less than four times per year. Reseeding or sodding as needed. Weed control and turf density should be practiced so that no more than one percent (1%) of the surface has weeds present. Weed control shall be performed as needed during each Visit.

2. **Fertilizer.** Adequate fertilization applied to plant species according to their optimum requirements. Application rates and times should ensure an even supply of nutrients for the entire year. Nitrogen, phosphorus, and potassium percentages should follow local recommendations from your County Extension Service. Trees, shrubs, and flowers should be fertilized according to their individual requirements of nutrients for optimum growth. Unusually long or short growing seasons may modify the chart slightly. Six (6) applications of fertilizer shall be provided each year for all turf, shrubs, and flowers.

3. **Irrigation.** Sprinkler irrigated. Electric automatic commonly used and recommended for cost efficiency. Frequency of use follows rainfall, temperature, seasonal length, and demands of plant material. The irrigation systems at this site are complex and tied to the Plaza irrigation systems. It is imperative the contractor work with the Plaza regarding irrigation times and control boxes. Control lines repair and maintenance as necessary and some lines are below the bridge structure on which the town homes are constructed. Irrigation water shall avoid the walkways and be timed to avoid residential morning use. Complete irrigation systems inspections shall be performed at least once every month.

4. **Litter Control.** Minimum of once per day, 7 days a week. Extremely high visitation may increase the frequency. Receptacles should be maintained and adequate in number to hold all trash generated between servicing without overflow.

5. **Pruning.** Frequency dictated primarily by species and variety of trees and shrubs. Length of growing season and design concept also a controlling factor, as are clipped hedges versus natural style. Timing usually scheduled to coincide with low demand periods or to take advantage of special growing characteristics such as pruning after flowering. Specimen trees shall be pruned to maintain small tree form and kept free of all dead or diseased branches. Trimming shall follow best management practices and allow for clear movement along pathways. Pruning of shrubs shall be performed as needed during each visit. Pruning of all palm trees shall be performed yearly, prior to ripening. Dead or diseased trees shall be reported to the Parks Department

6. **Disease and Insect Control.** Control program may use any of three philosophies: 1) Preventative: a scheduled chemical or cultural program designed to prevent significant damage; 2) Corrective: application of chemical or mechanical controls designed to eliminate observed problems; 3) Integrated pest management: withholding any controls until such time as pests demonstrate damage to plant materials or become a demonstrated irritant, as in the case of flies, mosquitoes, gnats, etc. At this maintenance level the controlling objective is to not have the public notice any problems. In Mode I, problems will either be prevented or observed at a very early stage and corrected immediately. Fungicides and pesticides shall be applied as needed during each Visit. All disease or insect control measures shall be sensitive to the location of this property over the St. John's River and be wetland sensitive

7. **Lighting.** Maintenance should preserve the original design. The entire area of any uprights shall be clear of obstruction. Light bases shall be black and free from peeling or rust. Damaged systems should be repaired quickly when discovered. Bulb replacement and any repairs should be done within three (3) working days after the outage is reported.

8. **Surfaces.** Sweeping, cleaning, and washing of surfaces needs to be done so that at no time does an accumulation of sand, dirt, or leaves distract from the looks or safety of the area. All surfaces shall be blown off following edge trimming. Repainting or re-stucco of structures or knee walls should occur when weather or wear deteriorate the appearance of the covering. Stains to surfaces should be taken off within five working days. Graffiti should be washed off or re-stucco surface over the next working day after application. Blowing and edging of all turf areas that meet paving or mulch beds shall be performed during each Visit. Weeds shall be removed from any paver cracks in way that does no harm to the walkway.

9. **Repairs.** Repairs to all elements of the design should be done immediately upon discovery. When disruption to the public might be major and the repair not critical, repairs may be postponed to a time period which is least disruptive.

10. **Inspection.** Inspections of this area shall be done daily by a member of staff.

11. **Formal Plantings.** Normally, extensive or unusual formal plantings are part of the design. These include ground level beds or planters. Maximum care of watering, fertilizing, disease control, disbudding, and weeding is necessary. Weeding flowers, formal grasses and shrubs is done a minimum of during each Visit. Any dead plant material shall be out for equal plant in species, cultivar and size unless due to changing conditions or disease. Weeds shall be defined as species not designed in the planting plan. Plant material shall not encroach on the walkway. The desired standard is essentially weed free. Mulch replacement shall be performed twice a year at a depth of 2" thick. A contiguous mulch layer shall be present at all times and mulch edges along sidewalks shall be 2" of mulch width. Mulch shall be Florida Friendly standards. Any new plantings shall be approved by the Parks Department.

12. **Special Features.** Features such as fountains, flag poles, or parking and crowd control devices may be part of the integral design. Maintenance requirements can vary drastically, but for this mode it should be of the highest possible standard. Fountains (two) to be serviced three times each week April through October of each year and two times each week November through March of each year. Such service shall include: test and maintain required water quality; clean all equipment, skimmers, drains, and surfaces; inspect and maintain all pumps, motors filters, pipes, valves, and gauges; provide weekly and quarterly NSPI test and reports; and, provide all required tools and chemicals.

13. **Reimbursable Expenses.**

(a) Payment requests for reimbursement for reasonable expenses exceeding the quarterly compensation amount shall be submitted to City/Parks Contract Manager for review/approval. Except for the approved allocated quarterly payment of City Funds, no disbursement shall be made until the expenses have occurred and are paid.

(b) Expenses incurred due to replacement of turf, irrigation systems, fountain equipment, various decorative elements such as flags, shrubs, trees, any formal plantings, lighting, sidewalks, paving, walls, curbs, gate systems, trash and seating equipment shall be paid by City to LP in addition to the compensation provided under the Agreement. Monthly expenses for utilities necessary for LP's performance of the Services, such as costs for electrical service and water service for the irrigation system, shall be paid by the City to LP in addition to the compensation provided under the Agreement. Invoices for reimbursable expenses should be sent to: City of Jacksonville, Director of Parks, 214 N. Hogan Street, 4<sup>th</sup> Floor, Jacksonville, Florida 32202 (telephone: (904) 255-7907).

## **Exhibit B**

### **Compensation Amount and Manner of Payment for the Work**

City hereby agrees to pay LP for the Work as follows:

The annual sum of ONE HUNDRED TWENTY-SIX THOUSAND AND 00/100 DOLLARS (\$126,000.00) (the "Annual Work Charge") shall be paid in four equal quarterly installments of \$31,500.00 (the "Quarterly Work Charge"), each payable within thirty (30) days after the end of each quarter following completion of the Work for that quarter.

In the event the term of this Maintenance Agreement is extended beyond the first anniversary date hereof pursuant to the provisions hereof, then the quarterly sum payable for the Work shall be adjusted according to the provisions of this paragraph. For purposes of this paragraph, the first twelve (12) months of the extension term and each successive twelve (12) month period thereafter during the extension term shall be referred to as an extension year. The Quarterly Work Charge for the first extension year and each succeeding extension year shall be determined by multiplying the Quarterly Work Charge in effect under the term of this Maintenance Agreement for the quarter immediately prior to the extension year in question by the "CPI Adjustment" (as hereinafter defined) for such extension year. The CPI Adjustment for an extension year shall be a fraction, the numerator of which shall be the average CPI for the twelve (12) months ending with the October immediately preceding such extension year and the denominator of which shall be the average CPI for the twelve (12) months ending with the October before the October immediately preceding such extension year. The term "CPI" as used in this Agreement shall mean the Consumer Price Index for All Urban Consumers, U. S. City Average, all items, not seasonally adjusted (1982-1984=100), published by the United States Department of Labor, Bureau of Statistics. If the issuance of the CPI by the federal government is discontinued, the City and LP shall use for the CPI the official index published by a federal governmental agency which is most nearly equivalent to the CPI. If no such index is available, then City and LP shall use such index or procedure which reasonably reflects increases or decreases in consumer prices in the Jacksonville, Florida Area.