

THIS AGREEMENT, is made and entered into this day by and between the **CITY OF BEE CAVE, TEXAS**, organized and existing under the laws of the State of Texas, acting by and through its duly authorized representative, and hereinafter referred to as the “CITY”, and **FRIENDS OF BEE CAVE FRIENDS OF PARKS FOUNDATION**, Bee Cave, Texas, acting by and through its duly authorized representative as a 501(c)(3) corporation, hereinafter referred to as “FRIENDS”.

WHEREAS, Friends is a legally distinct entity, separate from the City, duly incorporated 501 (c)(3) non-profit corporation created under applicable federal and state laws for the purpose of charitable and community service work to promote public use of Bee Cave Parks and Trails systems, to foster an appreciation of its cultural and educational value to the community, and to encourage improvement of its resources and services; and,

WHEREAS, the City and Friends wish to enter into this agreement in order to set forth the parties respective expectations in assisting each other to promote, develop and enhance the City parks and trails.

NOW THEREFORE, in consideration of the provisions hereinafter set forth in this agreement, the City and Friends mutually agree as follows:

**Section I
Responsibilities**

- A. The City agrees to undertake the following actions to the extent allowed by law:
 - 1. include the Friends in the long-term planning process to ensure that the Friends are aware of the goals and direction of the parks and trails; and,
 - 2. to share with the Friends the parks trails strategic initiatives at the beginning of each fiscal year and discuss with Friends how their resources and support might help forward these initiatives; and,
 - 3. to supply the Friends with a “wishlist” each year that indicates the anticipated needs for Friends support; and,
 - 4. to provide the Friends with staff support to assist them with development of the newsletter, mass mailings, meeting coordination, and Friends promotional materials, to the extent it does not interfere with the primary functions of operating the parks;
 - 5. to provide public space for Friends membership brochures and promotional materials, the extent it does not interfere with the primary functions of operating the parks and trails; and,

- B. Friends agree to undertake the following actions to the extent allowed by law:

1. publicly support the City and its policies; and,
2. to include a member from the Bee Cave Parks, Recreation and Facilities Department as a non-voting presence at all Friends' meetings and to allow room on the agenda for a Parks report; and,
3. any and all monies raised will be spent exclusively for parks and trails programs, services, and other City defined needs unless otherwise agreed to by both the Friends and the City and as permitted by the articles of incorporation or bylaws of the Friends; and,
4. agree that the City has the final say in accepting or declining any and all gifts made to the parks; and,
5. to engage in advocacy efforts on behalf of the City under the guidance of the City and shall cease at any time at the request of the City; and,
6. that if they cease to actively fundraise and promote the City, they will dissolve and distribute all remaining funds to the City, and provide any and all material which is helpful and conducive to the formation of a new friends of the parks foundation to be established in the future; and,
7. will not discriminate against any person because of race, religion, color, gender, or national origin.

Section II

Effective Date & Termination

This Agreement shall be effective upon execution by both parties and shall remain in force until terminated as provided for herein. The parties shall have the right to terminate this Agreement for any reason at any time after ten (10) days written notice to the other party.

All property, materials or other items furnished by either party pursuant to this Agreement are considered property of the respective party and shall be returned to that party upon termination or upon request at any time during this Agreement.

Section III

Roles and Liability of the Parties

A. Agency. The parties expressly acknowledge and agree that the actions of Friends' members while in the performance of duties authorized by this Agreement shall not be deemed to be the actions of the City. Friends shall educate and inform their members of their role and shall not allow conduct prohibited under the terms of this Agreement. No member, volunteer or other personnel of Friends shall be considered an employee of the City for purposes of gaining any rights or benefits due an employee of the City pursuant to the City's personnel policies.

B. Compliance with all laws. The parties shall observe and comply with the Constitutions of the United States and the State of Texas, and all applicable Federal, State, County and City laws, rules, ordinances and regulations in any manner affecting the conduct and performance of all obligations undertaken pursuant to this Agreement.

C. No Joint Venture or Joint Enterprise. This Agreement shall not be construed to establish a joint venture or joint enterprise by the parties. Nor shall this Agreement be construed to create or grant rights, contractual or otherwise, to any other person, third party or entity not a party to this contract.

D. Assignment. Neither party may assign any of the rights or duties created by this Agreement without the prior written approval of the other party.

E. Liability. The City shall not be liable for any claims, damages or attorney's fees arising from any negligent or unlawful acts of Friends or its members arising from the performance of duties or responsibilities under this Agreement.

F. Fiscal Year Limitation. In no event shall any provision of this Agreement be interpreted to obligate the City to expend any funds, unless approved by the Bee Cave City Council for any fiscal budget year.

Section IV Miscellaneous

A. Severability. If any word, phrase, clause, sentence or provision of the Agreement, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, such finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of the Agreement, this being the intent of the parties in entering this Agreement; and all provisions of this instrument are declared to be severable for this purpose.

B. Construction of Agreement. Although the Agreement is substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other.

C. Full and Final Agreement. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof, and may only be amended by a written document signed by both parties. All prior and contemporaneous understandings, whether written or oral, are merged herein.

D. Notice. Any notice required to be given under the terms of this Agreement shall be in writing. Notice shall be deemed delivered, whether or not actually received, three (3) days after it is deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed as set forth below with correct postage, with a copy sent concurrently by facsimile. Notice given in any other way shall be effective when and if actually received. Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

CITY: City of Bee Cave
4000 Galleria Parkway
Bee Cave, Texas 78738
Attn: City Administrator
Phone: 512-767-6610
Fax: 512-263-5576

FRIENDS: David D Ginger
5000 High Canyon Pass
Bee Cave, Texas 78738
Phone: 512-431-6154

Executed to be effective as of the ____ day of _____, 2018.

CITY OF BEE CAVE

Monty Parker, Mayor

ATTEST

Kaylynn Holloway, City Secretary

APPROVED AS TO FORM

Patty L. Akers, City Attorney

BEE CAVE FRIENDS OF PARKS FOUNDATION

By: David D Ginger

Title: President and Board of Director