RESOLUTION NO. 2024 -____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A PROGRAM AGREEMENT WITH THE BRYANT HISTORICAL SOCIETY, AND FOR OTHER PURPOSES

WHEREAS, The City of Bryant owns property at 200 SW 3rd in Bryant, Arkansas;

WHEREAS, The Bryant Historical Society provides historical education programming in Bryant;

WHEREAS, Providing historical education programming for the residents of the City of Bryant is an appropriate governmental function;

WHEREAS, the Bryant Historical Society's access to the facilities at 200 SW 3rd in Bryant to provide historical education programming on behalf of the City of Bryant is an appropriate and beneficial use of that space and facilities to further the historical education programs;

WHEREAS, the Bryant Historical Society's utilization and maximization of the space described in the attached Program Agreement (see Exhibit "A" attached hereto) benefits the City by maximizing historical education programming with the least economic costs to the City.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF BRYANT, ARKANSAS THAT:

Section 1. The Mayor and City Clerk are hereby authorized by the City Council for the City of Bryant, Arkansas to execute the attached Program Agreement for the Bryant Historical Society, (see Exhibit "A") for the purposes stated in such agreement.

Section 2. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the resolution which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of the resolution.

Section 3. All resolutions and other matters in conflict with this resolution are hereby repealed to the extent of any inconsistency.

PASSED AND APPROVED this ____ day of _____, 2024.

APPROVED: ATTEST:

_____ _____

Chris Treat, Mayor Mark Smith, City Clerk

Exhibit A

Bryant Parks and Recreation Department

2025 Program Agreement

THIS AGREEMENT made and entered into on _____ _____, 2024 by and between the City of Bryant Parks and Recreation Department, a department of the City of Bryant doing business at 210 S.W. 3rd Street, Bryant, Arkansas (hereinafter called "THE CITY"), and Bryant Historic Society, 200 SW 3rd, Bryant, Arkansas (hereinafter called "BHS").

WITNESSETH

WHEREAS, THE CITY owns property at 200 SW 3rd St. Bryant, Arkansas, and;

WHEREAS, the use of said property for the purpose of a historical museum has been considered the best use of this property for recreational purpose to better service the citizens of Bryant, Arkansas.

WHEREAS, THE CITY provides and maintains certain recreational programs, facilities and parks in Bryant, and;

WHEREAS, BHS provides program administration and operations of the historical education programs in Bryant;

NOW, THEREFORE, in consideration of mutual covenants and promises set forth herein, the parties agree as follows:

THE CITY agrees to grant use of 200 SW 3rd as outlined herein to BHS for the operation of historical education programming beginning on January 1, 2025 and ending on December 31, 2025. The named property will be used by BHS for programs and events provided to the City.

1. For a period not to exceed fifty years, BHS shall be permitted to use, upon payment of an annual fee of $1.00 which also covers the cost of monthly utilities (i.e. electricity and water/sewer expense), said facilities in sole consideration for the programs and services BHS provides to the City. Such Programs and services shall be operated in accordance with such guidelines as BHS shall determine to be appropriate. THE CITY will provide maintenance of the facilities in like manner and consistent with the

support extended to other associations operating on City property and for performance of programs and services, including building maintenance for normal wear and tear to 200 SW 3rd, the City agrees to allow BHS use of 200 SW 3rd, including utilities associated with said usage. Building maintenance by the City does not include repairs for property damage caused by BHS or its visitors.

2. Notwithstanding the foregoing, however, the annual use of the premises shall continue until notification as provided in Section 15 below is given to end the terms of this agreement.

3. BHS shall maintain insurance in amounts required by federal or state laws and hereby agrees to indemnify and hold harmless the City from any claims, lawsuits, judgments, or settlements brought as a result of the performance of this Agreement or BHS's provision of services hereunder.

4. The parties agree that THE CITY shall have no authority to direct the day-to-day activities of any BHS's employees, shall have no authority over BHS's personnel decision, or the conduct of the services and programs provided.

5. It is agreed that THE CITY has no financial interest in the business of BHS and shall not be liable for any debts or obligations incurred by BHS, nor shall THE CITY be deemed or construed to be a partner, joint venture or otherwise interested in the assets of the BHS, or profits earned or derived by the BHS, nor shall BHS at any time or times use the name or credit of THE CITY in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever.

6. BHS, in the performance of its operation and obligations hereunder, shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as THE CITY may from time-to-time request to indicate that BHS is an independent contractor. THE CITY does not and will not assume any responsibility for the means by which or manner in which service by BHS shall be wholly responsible therefore.

7. In the event any clause, phrase, provision, sentence, or part of this Contract or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Use Agreement as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional.

8. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

The general conditions of this program agreement will be:

1. BHS will operate programs in accordance to nondiscrimination requirements of *Title VI* of the 1964 Civil Rights Act.

2. It is agreed that the program for which this agreement is written must be made available to the general public to join and participate in. It is also agreed that the party sponsoring any community recreation program will furnish and supply all expendable materials necessary for conducting the program.

3. It is further agreed that program personnel must adhere to all provisions of the Americans with Disabilities Act (ADA) that apply to a particular program.

4. Program personnel and participants agree to abide by all Federal, State, and Local laws in addition to the policies of THE CITY pertaining to parks and facilities.

5. It is understood that THE CITY will not be liable for any injuries incurred by participants who are participating in activities on or in THE CITY facility. BHS shall indemnify and hold THE CITY, the City of Bryant, and all of its employees harmless against losses, claims, causes of action, and liabilities on account of damage to property or injury to or death of persons arising out of negligent acts by BHS, its agents, employees, or program participants

6. It is agreed that the named facility, area, or property may not be assigned, subleased, rented, reserved or loaned to any other group, business, individual, or entity by BHS without prior approval by THE CITY for any rental, assignment or subleased for any period longer than five (5) hours.

7. No alterations, changes, or modifications to change the intended use may be made to facilities by BHS, without first receiving written approval from THE CITY. The BHS must submit a detailed request in writing to THE CITY.

8. BHS assumes full responsibility and liability for damage caused by participants of their programs. Any damage caused will be fixed by BHS. If the repair is neglected for a long period of time THE CITY will make the necessary repairs and bill BHS.

9. BHS must inspect facilities prior to each use. If damage is discovered to equipment or the facility that poses an immediate hazard or danger then BHS must immediately notify THE CITY. Damaged equipment or facility that does not pose a danger or hazard should be discussed with THE CITY. BHS must report any vandalism or theft to THE CITY within 24 (twenty-four) hours or next business day.

10. Two keys will be given to the Director of the BHS. The BHS will provide the parks director with door codes and key fobs.

11. BHS agrees to return this agreement signed by the appropriate persons, and any and all additional requested material.

12. BHS agrees to provide a list of any bulk chemicals used and/or stored at the facility during their program agreement if applicable. This list must include a MSDS for each chemical listed and BHS must ensure that each chemical is properly stored according to MSDS specifications. THE CITY must be made aware of the intention to use any form of chemical prior to its use or storage in the facility.

13. Additional conditions to be agreed upon not previously listed:
    A. BHS will control all litter by picking up litter their program creates. The litter must be placed in the proper receptacle by BHS and then be removed on a regular basis by THE CITY contracted trash service. If excessive litter must be picked up after 24 hours of the program by THE CITY, BHS will be charged $10 for each individual man hour worked.

    B. BHS will provide proper insurance for the programs they will be operating on city property. Proof of insurance must be attached to this program agreement. BHS understands that their program participants are in no way covered by insurance by THE CITY.

    C. BHS will pay for weather damage to water lines, pumps, etc. if the BHS requests that the water be turned on before THE CITY deems acceptable due to weather conditions.

    D. BHS must contact THE CITY prior to any digging in the park area. The extensive underground wiring must be marked by THE CITY and One Call before any digging can begin. If this procedure is not followed and as a result any lines in the park are damaged, BHS will be responsible to pay for the cost of any and all repairs to the damaged lines.

    E. BHS will submit contact person(s) for after-business-hour emergencies. List responsibility of the person submitted.

    F. At the request of THE CITY, BHS will remove all their equipment at the completion of this agreement period.

    G. BHS will ensure that their employees or participants do not attempt to operate equipment belonging to THE CITY.

14. Either Party may terminate this Use Agreement by providing a 60 day written notice of its intent to not renew this agreement. Any such notice must be made 60 days but no more than 90 days prior to the end of any annual term of this agreement. Thus, the period to notify a party's intent to cancel this agreement must be submitted in October of the calendar year for which the party wishes to terminate the agreement for the following fiscal year.

15. Other specific agreements or assurance:

    A. Permanent improvements to facilities and fields will become property of THE CITY. Permanent fixtures include, but are not limited to all: concrete work, fences, underground installations, sprinkler heads, structural work, lighting fixtures, etc…

B. Non-permanent improvements will be retained by BHS and include: appliances, equipment, concession equipment, portable buildings, and etc… which were purchased by BHS.

16. For Annual Programs-

A. A program agreement must be signed annually in order to guarantee use of a facility or area. THE CITY will provide at least a 60 day notice prior to the end of the term of this agreement of the City's intent to cancel, modify or otherwise change the terms of this Use Agreement. Any changes in programs of uses by BHS will be provided to THE CITY via a written notice provided at least 30 days prior to any such change in program or use of the facilities governed under this Use Agreement. BHS shall notify THE CITY no later than 60 days nor more than 90 days prior to the end of any annual term of this agreement of BHS's intent to discontinue use of the facilities and/or its intent to vacate the facilities provided for herein.

B. Either party may amend this agreement when deemed necessary, but any amendment, alteration or change in this agreement, other than as provided for in paragraph 15 above, will only be affective by the mutual assent of both parties and will be effective when reduced to writing signed by both parties and attached to this original agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed in their behalf and supersede any and/or all previous agreements, contracts, or leases.

CITY OF BRYANT, ARKANSAS **Bryant Historical Society**

_____ _____

Mayor Chris Treat President

Attest:

_____

Mark Smith, City Clerk