

**PARKLAND IMPROVEMENT AGREEMENT
BETWEEN
THE CITY OF AUSTIN
AND CORE FOUNDATION**

This Parkland Improvement Agreement (the "Agreement") is entered on October 22, 2010 (the "Effective Date") by and between the **CITY OF AUSTIN**, a Texas home-rule municipal corporation situated in Hays, Travis and Williamson counties ("City"), and the **CORE FOUNDATION**, a Texas 501(c)3 non-profit corporation ("Foundation").

WHEREAS, Foundation wishes to solicit contributions, and provide funding to design, build and donate a fishing pier to be located on certain City-owned public parkland adjacent to Waller Beach at Lady Bird Lake, as more particularly described and graphically depicted on the attached **Exhibit A**, and

WHEREAS, during construction of the fishing pier a small portion of the City's Hike and Bike Trail, also located adjacent to Lady Bird Lake ("Trail"), will need to be re-routed to permit continued public use of the trail during construction, and such portion is more particularly described and graphically depicted on the attached **Exhibit A**; and

WHEREAS, Foundation also wishes to extend the Trail, as shown on **Exhibit A**, and City wishes to authorize Foundation to construct such extension; and

WHEREAS, City agrees to designate a parking spot located near the pier as Handicapped Only, and Foundation shall re-paint the space and re-build an ADA-compliant footpath from the parking area to the pier, and

WHEREAS, Foundation and City agree that the improvements contemplated will allow the City to better serve its citizens and numerous visitors to the park and Lady Bird Lake; and

WHEREAS, the pier and the extension of the Trail will meet the standards for compliance with the Americans with Disabilities Act, and will thus advance City's mission of encouraging accessibility for disabled park users and also provide an accessible pier for therapeutic activity for Foundation patients; and

WHEREAS, the parties wish to enter into an agreement to authorize Foundation to build the improvements described herein and to specify each party's responsibilities; and

WHEREAS, the Austin City Council has authorized the execution of this Agreement.

NOW, THEREFORE, the parties, in consideration of the mutual covenants expressed below, agree as follows:

I. TERM

This term of the Agreement begins on the Effective Date and, unless terminated in accordance with other provisions of this Agreement, continues for a period ending on January 31, 2017 ("Term").

II. DESIGNATION OF REPRESENTATIVES

The City designates the Director of the Parks and Recreation Department ("PARD") as its authorized representative to act on the City's behalf with respect to this Agreement. Foundation designates Eric Makowski, its President, or his successor, to act on Foundation's behalf with respect to this Agreement.

III. RESPONSIBILITIES OF FOUNDATION

A. Foundation shall raise the funds necessary to complete the work described below, which are referred to collectively in this Agreement as the "Project":

- 1) design and construct a fishing pier at the Property, shown on Exhibit A, and related improvements, including the necessary erosion control infrastructure, shown on **Exhibit A**; and
- 2) re-route a portion of the Trail, as shown in Exhibit A, during construction of the improvements described in subsection 1 above, so that public access is not interrupted, and then perform the work needed to restore the Trail to its prior condition; and
- 3) complete the painting and purchase and install the signage needed to designate a parking space in the parking area shown on **Exhibit A** to an ADA-compliant space reserved for the handicapped, and
- 4) Design and construct an extension of the Trail, as shown on **Exhibit A**.

Foundation has researched the costs to complete the Project and informed City that, as of the Effective Date, the full cost of completing the Project is estimated to be between One Hundred Fifty Thousand and No/100 Dollars (\$150,000) and Two Hundred Thousand and No/100 Dollars (\$200,000). Foundation shall have five years from the Effective Date noted above to raise the funds needed to complete the Project. Once funding is obtained, Foundation agrees to promptly commence construction.

B. Foundation agrees to place and construct the improvements described in Section A 1, 2 and 4 above according to plans, specifications and construction documents (collectively, the "Design Plan") approved by City prior to the start of construction. Foundation acknowledges that PARD will need to consult with other City departments, including those specializing in the construction of public works and watershed protection, prior to approving the Design Plan. Before or at the time of receipt of the approved building permit for the pier, Foundation shall present to City, for City's review and approval, a proposed construction schedule for construction and installation of all improvements ("the "Construction Schedule").

C. Foundation shall obtain from each subcontractor, material man, and supplier a written, one (1) year warranty acceptable to City for any work performed or materials supplied for the construction of the Project. Upon completion and acceptance of the pier, Foundation shall assign to the City, without further recourse against Foundation, all warranties that Foundation may have with respect to the Project. The completed Project shall be warranted free of defects for a minimum of one year from the date the Project is accepted by City.

D. Foundation agrees to follow all City ordinances and other rules and regulations and obtain the permits and approvals related to activities and construction of the Project, as well as those of any other governmental entity having jurisdiction. Foundation shall also comply with the PARD "Construction in Parks Specifications", attached hereto as **Exhibit B** and incorporated by reference for all purposes. The Parties agree that work on the Property shall not commence until City has received the proof of funding described in Article V., Section B. and PARD has issued a written "Notice to Proceed" for the Project. All construction and installation work shall meet or exceed City standards.

E. In order to minimize disruptions to use of the Property or the Trail, Foundation agrees to diligently prosecute completion of the Project in accordance with the Construction Schedule, and to coordinate all construction activity with designated PARD staff following issuance of the Notice to Proceed. City acknowledges that Foundation's ability to adhere to the schedule shall be subject to extension for delays caused by inclement weather, acts of God, strikes, shortages in labor or materials, acts of terrorism, and other causes beyond the control of Foundation (collectively, Force Majeure"), and agrees that a delay due to an event of Force Majeure shall not be considered a default.

F. Foundation shall have no right to place liens on the Property or the Trail, and shall not allow any liens to be placed against the Property or the Trail by any contractor, subcontractor, employee, agent or assign (collectively, "Contractors") or their vendors.

G. Upon completion of the Project, Foundation shall promptly deliver to the City written notice that the Project has been completed on a form approved by PARD ("Completion Notice"). Within twenty-one (21) days of receipt of the Completion Notice, the City shall respond to Foundation by either submitting a list of items still requiring completion or by accepting the Project. Acceptance of the Projects shall be evidenced by a letter of acceptance from PARD. Failure to respond to a Completion Notice within the 30-day period shall be deemed acceptance by the City.

H. Foundation and its agents shall perform this Agreement as independent contractors.

I. The provisions of Chapter 7-2 of the Austin City Code, *Art in Public Places*, do not apply to this Agreement because the City is not funding the project in whole or in part.

J. Foundation shall not discriminate against any Contractors or applicants for employment because of race, creed, color, national origin, disability, sex, age, religion, veteran status or sexual orientation.

IV. RESPONSIBILITIES OF THE CITY

A. The City grants Foundation and its Contractors that are responsible for any construction of the Project, or any related activity, the right to enter the Property and Trail in

order to construct the Project and re-route the Trail. This right of entry shall expire automatically upon acceptance of the completed Project by the City. This right of entry relates solely to the Foundation's rights related to the design and construction of the Project. The parties agree that Foundation members and clients shall have the same access and rights to use City-owned public parkland as the public,

B. PARD staff shall assist Foundation in coordinating the process to secure City permits and approvals necessary to complete the Project. Foundation and the Contractors shall coordinate with PARD staff to provide any information in the possession or control of Foundation or of a Contractor that is necessary or will facilitate applications for permits and approvals.

C. The City retains the right to inspect construction and to exercise its rights or duties in order to protect persons, property or the public interest. If at any time City, in its sole discretion, determines that the work being conducted poses a threat to persons, parkland, the Lady Bird Lake, or public interest, City may suspend the work or any portion of the work for not more than ninety (90) calendar days by written notice to Foundation stating the threat and City's concern. The Parties shall meet promptly to review the concern and shall work in good faith to resolve the concern or threat as soon as possible. Foundation shall resume the work on the date agreed upon by the Parties after the threat has been alleviated.

V. PROJECT COSTS AND RESPONSIBILITIES

A. Foundation shall be responsible for all costs of the Project. Any increases in the actual costs of the Projects, including cost increases, change orders and overruns shall be borne by Foundation. Costs include, but are not limited to, consultant fees, design costs, landscaping costs, labor costs, site restoration and re-vegetation costs, materials costs, engineering costs, Foundation legal fees, utility connection fees, permits, inspection fees, insurance costs and any other costs incurred in the design and construction of the Project.

B. Prior to beginning the Project, Foundation shall provide to the PARD Director written proof that it has the ability to pay for all costs to be incurred under this Agreement. Such proof may include an independently certified financial statement.

VI. WARRANTIES

Upon completion and acceptance of the Project, Foundation shall assign to City all warranties with respect to the Project without further recourse against Foundation.

VII. MAINTENANCE

Upon acceptance by the City of the Project, the City shall have complete responsibility for maintenance and operation of the fishing pier and any related improvements, including but not limited to responsibility for payment of utility costs associated with watering the Property. The Parties understand and agree that the improvements to be made by Foundation will be located on public park land, and will therefore be owned by City at all times and subject to laws and regulations applicable to park land.

VIII. LIABILITY AND INDEMNIFICATION

Foundation shall indemnify and hold harmless, and shall require its Contractors that design or construct the Project, to indemnify and hold harmless, the City, its employees and agents against any claims, causes of action, personal injuries, or damages, including but not limited to, reasonable attorneys' fees from or in connection with the negligent acts or omissions of Foundation, its agents, employees, or Contractors in the execution of its obligations under this Agreement.

IX. INSURANCE

A. Foundation shall require its Contractors to procure and maintain in full force and effect for the duration of this Agreement insurance coverages in accordance with the requirements as set forth in **Exhibit C**.

B. Foundation shall also require performance bonds and payments bonds from each Contractor in the full amount of the Contractor's contract sum, and shall provide evidence of such bonds to City upon request.

C. Foundation, at its sole expense, shall (i) comply with all laws, statutes, orders, ordinances, rules and regulations of federal, state, county and municipal authorities having jurisdiction over the property upon which the Project relating to the Project or which are the direct result of the Project; (ii) comply with any direction, order or citation made pursuant to law by any public officer requiring abatement of any nuisance or which imposes upon either of the Parties any duty or obligation arising from Foundation's particular manner of occupancy or use of the park land or required by reason of a breach of any of Foundation's obligations under this Article IX, Section C or by or through other fault of Foundation; (iii) comply with all insurance requirements set forth herein; (iv) without limiting the obligations of Foundation under clause (i) above, comply with all laws, orders, ordinances, rules and regulations governing ("Environment Laws"), and all procedures and rules established by the City for, the use, abatement, removal, storage, disposal or transport of any substances, chemicals or materials declared to be, or regulated as, hazardous or toxic under any applicable Environmental Laws ("Hazardous Substances") and any required or permitted alteration, repair, maintenance, restoration, removal or other work in or about the park land that involves or affects any Hazardous Substances, and (v) except in compliance with all applicable Environmental Laws, not store, use, release, produce, process or dispose in, on or about the park land, or transport to or from the park land, any Hazardous Substances. Foundation agrees to indemnify and hold the City harmless from any loss, cost, claim or expense which the City incurs or suffers by reason of Foundation's failure to comply with its obligations under this Article IX, Section C. The obligations referenced in this section will survive the expiration of the term or the early termination of the Agreement.

X. TERMINATION

A. If any party fails to properly fulfill its obligations under this Agreement in a timely manner, or if any party violates any of the provisions of this Agreement, the non-breaching party shall notify the other party in writing of the specific violations of the Agreement. The breaching party shall have thirty (30) days from receipt of this notice in which to cure any such violations. If the violation cannot be reasonably cured within said 30-day period, and the breaching party has diligently pursued such remedy as shall be necessary to cure violation, then the parties may agree in writing to an extension of the period in which the violation must be cured.

B. If the breaching party has not cured any such violation as specified in the written notice within the time period to cure, the non-breaching party, at its sole option, shall have the right to terminate this Agreement. This termination shall be made by sending a written notice ("Notice of Termination") to the breaching party. This Notice of Termination shall be effective for all purposes three calendar days after deposit in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested or, if sent by confirmed facsimile, on the date shown on the confirmation sheet.

C. If Foundation defaults under this Agreement, upon depositing the Notice of Termination with the U.S. Mail or sending a confirmed facsimile as specified above, the City may assume control of the Project and control and possession of any Foundation contract documents or any contract rights related to the Project. Foundation agrees to fully cooperate in the transfer of such control.

D. If Foundation has not begun construction of the fishing pier by July 1, 2016, due to funding issues or any other reason, either Party may terminate this Agreement without further obligation by providing at least thirty (30) days written notice to the other Party.

XI. CONDITION OF PREMISES; DISCLAIMER OF WARRANTIES

Except as otherwise expressly provided in this Agreement, Foundation agrees to accept the park land and construction site in "as is" conditions and agrees that the City shall have no obligation to alter the property, including the Trail, in any way. Except as expressly set forth or called for in this Agreement, neither the City nor any agent, employee, or representative of the City, makes or has made any warranties or representations of any kind or character, expressed or implied, with respect to the physical condition of the property or construction site or its fitness or suitability for any particular use.

XII. MISCELLANEOUS PROVISIONS

A. This Agreement constitutes the entire agreement between the parties. Any previous agreement, assertion, statement, understanding, or other commitment before the date of this contract, whether written or oral, shall have no force or effect. No agreement, assertion, statement, understanding, or other commitment during the term of this Agreement, or after the term of this Agreement, shall have any legal force or effect unless properly executed in writing by the parties.

B. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas, and venue for any lawsuit concerning this Agreement shall be brought in the City of Austin, Travis County, Texas.

C. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party. All official communications and notices required to be made under this Agreement shall be deemed made if sent postage prepaid to the parties at the addresses listed below:

If to the City:

Sara Hensley, Director (or her successor)
Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, Texas 78767
Facsimile: 512-974-6703

Copy to:

Bert Lumbreras, Assistant City Manager (or his successor)
City of Austin
301 West Second Street, Third Floor
Austin, Texas 78701

If to Foundation:

CORE Foundation
Attn: Eric Makowski, President (or his successor)
400 Old Hwy 290
Dripping Springs, Texas 78620
Facsimile: 512-858-4627

D. The City and Foundation, respectively, bind themselves, assigns and legal representatives to this Agreement.

XIII. SEVERABILITY

If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts of this Agreement shall remain in full force and effect.

XIV. WAIVER

If at any time the City, its successors or assigns, fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a continuing waiver or estoppel of the right to enforce it.

XV. NO RECOURSE

No recourse shall be had against any elected official, director, officer, attorney, agent, or employee of either Party, whether in office on the Effective Date of this Agreement or after such date, for any claim based upon this Agreement.

XVI. NO ASSIGNMENT/ NO THIRD PARTY BENEFICIARIES

A Party to this Agreement may not assign or transfer its interests under this Agreement without the prior written authorization of the other party. The Parties agree that the provisions of this Agreement are intended to benefit only City and Foundation and that nothing in this Agreement shall be interpreted to grant any rights to any other person or entity, and that there are no third party beneficiaries.

XVII. AUTHORITY TO EXECUTE

Each Party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party, except as may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors rights, or with respect to City, governmental immunity under the Constitution and laws of the State of Texas.

XVIII. AMENDMENT IN WRITING

This Agreement may be modified only by a writing properly executed by each of Party, following approval by Austin City Council. Neither any representation or promise made after the execution of this Agreement, nor any modification or amendment of this Agreement, shall be binding on the Parties unless made in writing and properly executed by each Party. Provided any amendment, change or extension does not increase the Agreement amount in excess of the then current administrative authority of the City Manager and the form of amendment is approved by the City Law Department, the City Manager or the City Manager's designee is authorized to execute any amendment to the Agreement on behalf of the City without further authorization by the City Council.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED AND EFFECTIVE the date first above stated.

CITY OF AUSTIN, a Home Rule Municipal Corporation

By: _____

Printed Name: Sara Hensley

Title: Director, Parks and Recreation Department

Date: October __, 2010

Executed and effective the date first above stated.

CORE FOUNDATION

By: _____

Printed Name: Eric Makowski

Title: President

Date: _____

EXHIBITS

Exhibit A – Site Plan, Pier Plan and Map

Exhibit B – Construction in Parks Specifications

Exhibit C - Insurance Requirements

**EXHIBIT A
TO
PARKLAND IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN AND CORE FOUNDATION**

[See Attached]

**EXHIBIT B
TO
PARKLAND IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN AND CORE FOUNDATION**

CONSTRUCTION IN PARKS SPECIFICATIONS

[See Attached]

EXHIBIT B

SECTION 5 - CONSTRUCTION IN PARKS

5.1.0 GENERAL

The information in this section is intended to define the technical design criteria needed for construction on parkland owned by the City of Austin.

Although parkland construction is generally achieved through contractual agreement, this section provides guidelines that coordinate the special requirements for park construction with the general development requirements of the Land Development Code and the Technical Manual Series.

Appeals concerning the enforcement of these rules shall be brought to the Director of the Parks and Recreation Department.

Construction activities that disrupt the environment are an inevitable part of the growth and maintenance of a city and as a city develops, the open areas of parks, creeks and greenbelts become more attractive as routes for underground utilities. This is the case in Austin where the many creeks and greenbelts, under the control of the Parks and Recreation Department, have and will continue to provide a convenient route. In many cases, such installation of underground utility lines, causes only temporary disruption and the environment eventually returns by natural means to its original state. The length of time required for recovery of the original vegetation may be great, however, depending on the proximity of seed sources and the suitability of soil conditions for plant establishment and growth. The purpose of these guidelines is to reduce and control the construction impact upon the City's park areas and to speed the recovery of natural vegetation. This can be done by minimizing the initial environmental impact of construction, restoring suitable soil conditions and introducing appropriate plant species.

Construction impact can be minimized by selecting the least destructive route that is feasible within the constraints of the budget. It also involves the avoidance of unnecessary impacts during the course of construction, such as the excessive destruction of vegetation and the loss of soil through uncontrolled erosion.

Restoration of soils involves restoring the original contours of the land and ensuring that soil physical conditions are suitable for plant growth. Soils of construction sites have generally been compacted by heavy machinery and topsoil has been lost or at least diluted by subsoils. These and other conditions must usually be improved before vegetation can be established.

5.2.0 ADVANTAGES OF RESTORATION AND REVEGETATION

Restoring natural vegetation in disturbed areas has practical advantages as well as ecological and aesthetic ones. On the practical side, natural vegetation provides low maintenance landscaping while also helping to minimize precipitation runoff and the consequent problems of soil erosion, siltation and flooding. Ecological and aesthetic advantages stem from the fact that natural vegetation is diverse in terms of species composition and growth forms. This diversity results not only in a more interesting landscape, but also one that provides suitable living space for native wildlife in an increasingly

urbanized area.

A particular advantage of restoring natural vegetation in Austin is that of helping to conserve the city's unique flora. These guidelines should be used in conjunction with the Revegetation Criteria found in Section 1.4.0 of this manual.

The objective of the revegetation criteria is to provide information on the processes involved in planning the restoration of natural vegetation in disturbed areas.

The procedures for route selection, reconnaissance survey and preconstruction inventory should be followed. The information compiled should be presented as an environmental report and used in conjunction with the Parks and Recreation Department in selecting a route and for restoration and revegetation.

The initial environmental impact of construction can be minimized by proper planning. Effective and efficient restoration of the site upon completion of construction also calls for planning.

Ecologically or aesthetically valuable areas can often be avoided with little or no increase in construction costs. The resulting environmental savings is doubled by the fact that restoration of topography and vegetation is consequently less complex and less expensive. Once a final project alignment is selected, further savings are possible by planning resource salvaging efforts, erosion control and restoration of topography and vegetation.

5.3.0 ROUTE SELECTION

A reconnaissance survey is necessary in order to select the least expensive alignment of the construction right-of-way corridor. Included in the expense estimate is the cost of restoring the pre-existing vegetation following construction, as well as the cost of the construction itself. In most cases, the cost of restoration will be insignificant compared to the expense of moving the alignment to avoid vegetation, but not always. If planning is done well in advance, it is probable that an alignment can be achieved which will not be significantly more expensive, but will be considerably less destructive than some other alignment that is made without reference to the vegetation.

Using information obtained during the reconnaissance surveys, select the least destructive route through the area. In comparing the costs of various alternatives, the costs of restoration should be considered. For example, it may be less expensive to realign a potential construction corridor to avoid important vegetational or topographic features than to restore the features later. Rare plant populations must be avoided at all costs. Transplanting the rare species elsewhere is no solution, since habitats suitable for rare species are frequently protected.

After the final alignment is selected, an inventory of the resources in and near the construction easement should be conducted. This is necessary in order to plan restoration efforts and to minimize the immediate environmental impact of the project.

The simplest, most effective model for restoring vegetation is the original vegetation. If this is described prior to construction there will be fewer decisions to make concerning what species and densities to restore. If the original vegetation is weedy, however, it would be advisable to restore a more desirable community.

5.3.1 Tree Survey

When suitable alignment has been decided, a detailed tree survey of the construction and access easements is required. The survey is to include those trees adjacent to the easement whose driplines come within the easement.

The survey is to show all Class 2 or Class 3 trees whose diameter is larger than four (4) inches and all Class 1 trees, regardless of size. Particular attention should be paid to identifying Class 1 trees with a view to transplanting. (See Appendix F)

The survey is to show:

- The location of the tree.
- The diameter of the trunk at 4½ feet above natural grade.
- The approximate crown size of the large trees.
- The species and/or common name of the tree.

Trees to be removed should be indicated and the locations approved by the Parks and Recreation Department. All trees that are to be retained are to be protected with tree protection fences (see Appendix K). These tree protection fences are to be shown on the construction drawings.

5.3.2 Tree Evaluation

A tree evaluation is required to establish a relative value of the trees that will be removed or impacted by the construction works (see Section 3.5.1).

These evaluations will provide the basis for replacement of those trees removed or to assign a monetary value to them.

The tree evaluation system is shown in detail in Section 3. Trees to be removed will be carried out in accordance with the methods shown in Section 5.4.6, Site Clearing.

5.3.3 Disturbed Natural Areas

Natural areas within the Parks and Recreation Department's jurisdiction are greenbelts, wilderness parks and nature preserves.

Any areas that are disturbed within these natural parkland areas will require restoration as detailed in Appendix L, to ensure that their character as natural areas are maintained.

5.4.0 CONSTRUCTION

5.4.1 General

The Texas Parks and Wildlife Code, Chapter 26, prohibits any construction activity on public land designated for park and recreation use unless an easement has first been granted by the City Council. This easement process is described below in Section 5.4.4.

All construction activity on lands under the jurisdiction of the Parks and Recreation Department shall conform to the requirements of these guidelines.

If not covered by these guidelines all construction activity shall, with the approval of the Parks and Recreation Department, be in accordance with the City of Austin Standard Specifications.

Particular attention is drawn to the following paragraphs of the "General Conditions of Agreement - Bidding and Contract Requirements," in Section 00140 of City of Austin Standard Specifications particularly 3.14 "Laws and Ordinances", and 10.10 "Safety of Persons and Property".

5.4.2 Laws and Ordinances

The contractor shall at all times observe and comply with all federal, state and local laws, ordinances, codes and regulations which in any manner affect the contract or the work and shall indemnify and save harmless the owner and engineer/architect against any claim arising from the violation of any such laws, ordinances and regulations whether by the contractor or his employees. If the contractor observes that the project is at variance therewith, he shall promptly notify the engineer/architect in writing, and any necessary changes shall be prepared as provided in writing, and any necessary changes shall be prepared as provided in the contract for changes in the work. If the contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the engineer/architect, he shall bear all costs arising therefrom. The ordinances and regulations of the City shall be controlling and shall be considered as part of this contract to the same effect as though embodied herein.

Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. The contractor shall plan and execute his operations in compliance with applicable federal, state and local laws and regulations concerning the control and abatement of water pollution and the prevention and control of air pollution.

Care shall be exercised to preserve the natural landscape within the project site and shall conduct his construction operations so as to prevent any unnecessary destruction, scarring or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent construction, trees and vegetation shall be preserved and protected from damage which may be caused by equipment and construction operations. Where unnecessary destruction or damage occurs as a result of the contractor's operations to trees, replacement or correction shall be made at the contractor's expense as directed by the engineer/architect. Prevention of noise pollution shall be a responsibility of the contractor. Garbage, trash and material debris shall be picked up daily and deposited in a suitable receptacle provided and maintained by the contractor. Measures shall also be implemented to prevent the escape of mud and excess concrete.

5.4.3 Safety of Persons and Property

All reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the work and all other persons who may be affected thereby;
2. All the work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the contractor or any of his subcontractors or sub-subcontractors; and

3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.

The contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the work, the contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

All blasting, including methods of storing and handling explosives and highly flammable materials, shall conform to federal, state and local laws and Ordinances.

5.4.4 Easements

For information and procedures for obtaining easements through City of Austin Parkland see the Administrative Criteria Manual.

5.4.5 Access and Security

All permanent easements, temporary construction easements, access roads, work areas and materials storage sites should be shown on the construction drawings in locations agreed and approved by the Parks and Recreation Department. All construction shall be confined to the marked easements. No material, equipment, plant, vehicle parking or storage shall occur outside this easement or within the dripline of trees retained in or adjacent to the easement. The contractor will be responsible for all damages to work areas, storage sites and access roads which are a result of his use or negligence in protection and for all damage that is caused by the contractor working outside of these areas. Spillage or discharge of oil or other toxic fluids shall be contained and removed from the site.

Prior to bringing major construction equipment into unpaved areas, the contractor shall outline the limits of the construction and access easements which will be disturbed, with a barrier in accordance with City standards.

If the construction works are carried out in a park location where the public has access, an eight (8) foot high chain link security fence is to be provided around the immediate area of construction operations, all work areas and storage sites. This fence is to be secured to prevent unauthorized entry at all times when contractors personnel are not at the site.

The contractor shall exercise utmost care in preventing damage to trees and other items in the Parks and Recreation Department area. Any damaged item shall be repaired or replaced, at no expense to the City, to a condition equal to or better than their condition before construction.

All workers should be informed of the special efforts to salvage and restore the vegetation and they should be encouraged to prevent unnecessary damage.

5.4.6 Site Clearing/Erosion Control

To prevent erosion, clearing of easements and access routes will only be carried out for a distance of 1,000 feet in advance of construction or seven (7) days prior to construction being at that location.

Trees that are to be removed shall be taken down in a manner which will not impact any of the adjacent trees to be retained.

All trees will have crown and limbs removed before being felled and depending upon the density of vegetation the trunk shall be felled before the stump is removed.

The City may require that limbs and underbrush be chipped/shredded and retained on site to be spread as a mulch after construction has finished.

The boundary of the access route and working easement clearing shall be marked with a barrier described above. The boundary shall be reviewed with the Parks and Recreation Department prior to marking. No clearing operations will be allowed in an unmarked area.

Salvaging and placing existing topsoil shall be in accordance with City of Austin Standard Specifications, Item No. 601.

Spoil shall not be placed within the drip line of trees. In locations where the line runs along the creek bank, care is taken to prevent excavated material from spilling into or blocking the creek. At the end of the work day, all spoil shall be cleaned up, ditches backfilled and excess spoil removed from the job site.

5.4.7 Temporary Erosion Control

Temporary erosion controls during the construction period shall be carried out in accordance with the measures contained in Section 1.4.0 of this manual.

5.4.8 Construction in Creeks

Every effort shall be made to keep the zone of immediate construction free of surface water. For construction in the creek channel, a pipe of adequate size to divert normal stream flow shall be provided around the construction area. Diversion may be by pumping or gravity flow using temporary dams.

A. Discharge of Pumped Water.

Where water must be pumped from the construction zone, discharges shall be in a manner that will not cause scouring or erosion. All discharges shall be on the upstream or upslope side of emplaced erosion control structures. If discharges are necessary in easily erodible areas, a stabilized, energy-dissipating discharge apron shall be constructed of riprap with minimum stone diameter of six (6) inches and minimum depth of 12 inches. Size of the apron in linear dimensions shall be approximately ten (10) times the diameter of the discharge pipe. Discharges into creeks or major drainages should be as identified by the site development permit.

B. In-Channel Erosion and Siltation Controls.

The contractor will be responsible for controlling erosion and sedimentation in the construction zone. When leaving the job site for more than 12 hours, the contractor shall remove loose excavated materials

from the creek channel, except all excavated trench sections shall be backfilled when the contractor leaves for the weekend.

C. Creek Banks.

Creek banks shall be restored wherever they have been disturbed during the construction process. The contractor shall be responsible for the costs of repair and restoration for all damage to the creek banks, whether caused by personnel or equipment. Stone riprap or gabions shall be used to stabilize cut banks where line enters and exits channel or as otherwise approved by Parks and Recreation Department.

D. Excavation in Creek Channel.

Material excavated from the trench in the creek channel shall not be deposited on the channel banks. Excavation shall be hauled out of the channel or used in backfill of open trench. No loose excavated material shall be left in the channel at the end of a work day.

E. Trench Cap in Creek Channel.

The contractor shall cap the trench in the creek channel with two (2) square feet or larger job excavated rock material or similar. This cap shall extend a minimum of 30 inches from the top of the trench.

5.4.9 Site Cleanup

Upon completion of the work and before restoration and revegetation, the contractor shall clean and remove from the site of the work, all surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition at least equal to that which originally existed. Surplus and waste materials removed from the site of the work shall be disposed of in a permitted disposal area.

In the event the contractor fails or refuses to clean up and remove surplus materials and debris as above provided, the City may do so or cause same to be done, at the contractor's expense and the reasonable cost thereof shall be deducted from the final payment.

5.4.10 Restoration/Revegetation

The Parks and Recreation Department will provide detailed planting requirements for revegetation of all disturbed areas. These requirements will consider and be based upon the submitted Environmental Report, the Tree Evaluation Survey and Restoration of Disturbed Natural Areas, Appendix L. The revegetation shall be carried out in accordance with the City of Austin Standard Specifications.

Disclaimer:

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**EXHIBIT C
TO
PARKLAND IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF AUSTIN AND CORE FOUNDATION**

Insurance Requirements

(1) Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverage's A & B. The policy shall contain the following provisions:

- (a) Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this project.
- (b) Completed Operations/Products Liability for the duration of the Warranty period.
- (c) Explosion, Collapse, and Underground (X, C, & U) coverage.
- (d) Independent Contractors coverage.
- (e) City of Austin listed as an additional insured, endorsement CG 2010.
- (f) 30 day notice of cancellation in favor of the City of Austin, endorsement CG 0205.
- (g) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.

(2) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation endorsement TE 2046A
- (b) 30 day Notice of Cancellation endorsement TE 0202A
- (c) Additional Insured endorsement TE 9901B

Contractor and all subcontractors providing services at the park shall carry insurance in the types and amounts indicated below for the duration of their Contract, which shall include items owned by the City in the care, custody and control of the Contractor prior to and during the construction and warranty period:

Specific Requirements for Contractors and Subcontractors

(1) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employers liability of \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (a) Waiver of Subrogation, form WC 420304
 - (b) 30 day Notice of Cancellation, form WC 420601.
- (2) Commercial General Liability Insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverage's A & B. The policy shall contain the following provisions:
- (a) Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this project.
 - (b) Completed Operations/Products Liability for the duration of the Warranty period.
 - (c) Explosion, Collapse, and Underground (X, C, & U) coverage.
 - (d) Independent Contractors coverage.
 - (e) City of Austin listed as an additional insured, endorsement CG 2010.
 - (f) 30 day notice of cancellation in favor of the City of Austin, endorsement CG 0205.
 - (g) Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.
- (3) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation endorsement TE 2046A
 - (b) 30 day Notice of Cancellation endorsement TE 0202A
 - (c) Additional Insured endorsement TE 9901B
- (4) Builders' Risk or Installation Insurance shall be provided for building or renovation projects, Contractor shall maintain on an all risk physical loss form in the amount of the contract price for such improvements. Coverage shall continue until the project is accepted by the City. The City of Austin shall be a loss payee on the policy.

For contracts requiring the use of an architect, engineer or consultant, the following insurance requirement is added to those shown above:

- (5) Professional Liability Insurance For Work, which requires professional architectural, engineering, or surveying services, to meet the requirements of the Contract, Design Consultant and their Subcontractors, who are responsible for performing the professional services shall provide Professional Liability Insurance with a minimum limit of \$250,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed with respect to all professional services

provided in due course of the Work of this Contract or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the Design Consultant and their Subcontractors. The policy shall provide for 30 day notice of cancellation in favor of the City of Austin.

General Requirements

Contractor must complete and forward a certificate of insurance to the City before the Contract is executed. The Contractor shall not commence work until he/she has obtained the required insurance and until such insurance has been reviewed by the City's Project Manager and Contract Administration Office. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder.

Contractors insurance coverage is to be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

Contractor must submit certificates of insurance for all Subcontractors to the City prior to them commencing work on the project. Subcontractors' insurance shall be written by companies licensed to do business in the State of Texas and with A.M. Best ratings of B+VII or better.

All endorsements naming the City of Austin such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate: City of Austin, Parks and Recreation Department, P.O. Box 1088, Austin, Texas 78767-8828.

The "other" insurance clause shall not apply to the City where the City of Austin is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

If insurance policies are not written for amounts specified above, Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

The City reserves the right to review the insurance requirements set forth during the effective period of this Parkland Improvement Agreement and to make reasonable

adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

The Contractor shall be responsible for premiums, deductibles and self-insured retention's, if any, stated in policies. All deductibles or self-insured retention's shall be disclosed on the certificate of insurance attached.

The Contractor shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.

If City owned property is being transported or stored off-site by the Contractor, the appropriate property policy will be endorsed for transit and storage in an amount sufficient to protect the City's property.

The insurance coverage's required under this contract are required minimums and are not intended to limit the responsibility or liability of the Contractor.