

## LICENSE AGREEMENT 11/29

THIS LICENSE AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2012 (the “**Effective Date**”) between the CITY OF AUSTIN, a Texas home-rule city and municipal corporation (the “**City**”) and AMERICAN YOUTH HOSTELS, INC., d/b/a HOSTELLING INTERNATIONAL-USA, a federally chartered 501c3 non-profit corporation organized under the laws of the State of New York, having its national administrative office at 8401 Colesville Road, Suite 600, Silver Spring, MD 20910 (“**HI-USA**”). The City and HI-USA are hereinafter sometimes collectively referred to as the “**Parties**.”

### RECITALS

WHEREAS, HI-USA currently occupies that certain City-owned park facility located at 2200 South Lakeshore Boulevard, which HI-USA operates as a youth hostel;

WHEREAS, HI-USA and the City desire to enter into this Agreement to memorialize the terms and conditions of HI-USA’s continued use of the facility.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and HI-USA agree as follows:

### AGREEMENT

1.0 License Grant. The City hereby grants to HI-USA and HI-USA hereby accepts from the City a temporary license to operate the property and improvements depicted on Exhibit A (collectively, the “**Premises**”) subject to the terms of this Agreement.

2.0 License Term. The primary term of this Agreement (the “**Primary Term**”) shall commence on \_\_\_\_\_, 2012 (the “**Commencement Date**”) and shall terminate on \_\_\_\_\_, 2017 unless terminated earlier according to the terms of this Agreement. HI-USA will have the right to extend the Primary Term for one (1) five (5) year period (the “**Extension Term**,” which, together with the Primary Term is hereinafter collectively called the “**Term**”). To exercise the Extension Term, HI-USA must give written notice of its election to exercise the Extension Term to the City at least ninety (90) days before the expiration of the Primary Term and HI-USA must not be in default of this Agreement at the time the notice is given or at the time the Extension Term becomes effective. Each Party may terminate this Agreement at any time upon one-hundred and eighty (180) days written notice to the other Party. If HI-USA remains on the Premises without the City’s written consent after the expiration of the Term, HI-USA’s continued occupancy will not be deemed to extend or renew the Term, and during the period of continuing occupancy, HI-USA will continue to be subject to the terms of this Agreement and the License Fee (defined below) payable by HI-USA will accrue at a daily rate equal to one fifteenth (1/15) of the License Fee in effect upon the termination

of this Agreement. The acceptance of the license fee from HI-USA does not constitute the City's consent to HI-USA's continued occupancy of the Premises after the expiration of the Term, and nothing in the Agreement is intended to or will be deemed to create a leasehold interest in the Premises.

3.0 License Fee. HI-USA will pay to the City monthly, in advance, without setoff or deduction, at the address specified by the City, on or before the 5<sup>th</sup> business day of each month of the Term, an amount equal to \$2,000.00 (the "**License Fee**") in consideration of HI-USA's occupancy and use of the Premises during the Primary Term. If HI-USA does not remit the License Fee to the City on or before the 10<sup>th</sup> business day of each month during the Term, HI-USA will owe and will pay immediately to the City in addition to the delinquent License Fee a late charge equal to five percent (5%) of the delinquent License Fee. The License Fee for the Extension Term if exercised by HI-USA will be an amount mutually agreed to by the Parties; provided, however, that the License Fee for the Extension Term will not be less than the License Fee for the Primary Term.

4.0 Premises Conveyed As-Is. HI-USA acknowledges that it has had the opportunity to inspect the Premises and to conduct any inspections and testing of the Premises as it deemed necessary or desirable. In reliance solely on its inspections and testing of the Premises, HI-USA accepts the Premises in their "AS IS," "WHERE IS" condition, "WITH ALL FAULTS," and with all latent and patent defects, if any; and the City makes no representations or warranties of any kind, express or implied, with respect to the Premises, including, without limitation, warranties as to habitability, fitness or suitability of the Premises for a particular purpose or for compliance with Governmental Regulations (defined below), or as to the presence or absence of any hazardous substances, including, but not limited to, asbestos and asbestos-containing materials.

5.0 Permitted Use of the Premises.

5.1 Except as described in Section 5.2, HI-USA may use the Premises solely for operating a youth hostel and for recreational, cultural and educational programs approved by the City in advance in writing (collectively, the "**Permitted Use**"). HI-USA may not occupy or use the Premises for any unlawful use or purpose, and HI-USA shall conduct its business in such a manner as not to create a nuisance.

5.2 Concessions. HI-USA may use the Premises for concessions that have been approved by the City Council. HI-USA agrees that the general public shall have access to all concessions on the Premises during the concession's operating hours. HI-USA shall obtain the approval of the PARD Director before finalizing the terms of any concession agreement, and agrees that a concession agreement located on the Premises must provide a financial benefit to the City.

*{Note: If Council votes to authorize the waiver of park land concession ordinance for Epic concession, following sentence will be added: As of the Effective Date of this Agreement, the City Council has authorized HI-USA to enter into a concession agreement on the Premises with EpicSUP. HI-USA*

agrees to provide City with HI-USA activity reports and concession reports required by the PARD Director.

#### 6.0 Operation and Maintenance.

6.1 The Hostel shall maintain and repair the interior and exterior of the Premises in a clean, healthful and safe condition. Hostel shall be responsible for cleaning, maintaining and repairing parking areas, sidewalks, drive ways, service areas, and curbs, including removal of debris. Hostel's responsibilities for the interior of the Premises shall include maintaining and repairing heating, air conditioning, plumbing and electrical systems. Hostel shall be responsible for repair and maintenance of any interior or exterior structural additions or alterations, including remodeling, performed or contracted by Hostel.

Subject to City Council action to approve funding City, through PARD, will be responsible for maintaining and making repairs to the following structural portions of the Premises that the City constructed: the roof, exterior walls, pipes and conduits and foundation provided, however, that Hostel shall be responsible for such maintenance and repairs if the problem is a result of improvements or work performed by the Hostel or a Hostel contractor, failure of Hostel to perform routine maintenance, or failure of Hostel to comply with state or local regulations, including building code regulations.

6.2 HI-USA shall conduct all its operations on the Premises in compliance with all applicable municipal, county, state and federal laws, codes, rules and regulations, including rules adopted by the City's Parks and Recreation Department ("PARD") (collectively, "**Governmental Regulations**") at HI-USA's sole cost and expense.

6.3 HI-USA shall provide the City with copies of any key cards or keys to the Premises to enable the City's employees, representatives, agents and contractors to access the Premises for the purposes permitted under this Agreement and to permit the City to exercise its municipal functions.

6.4 HI-USA will make no improvements, alterations or changes to the Premises without the City's prior written approval, which approval the City may withhold or condition at its sole and absolute discretion.

6.5 HI-USA will repair at its sole cost and expense all damage to the Premises caused by the actions or omissions of HI-USA or HI-USA's employees, agents, licensees, invitees, guests, volunteers or contractors.

6.6 Upon the expiration of the Term or earlier termination of this Agreement, HI-USA shall deliver the Premises to the City, with all improvements located thereon, in substantially the same condition in which it existed as of the

Commencement Date, reasonable wear and tear excepted, together with all keys, key cards and other access devices for the Premises. All furniture, removable trade fixtures and equipment installed by HI-USA must be removed by HI-USA upon the expiration of the Term or earlier termination of this Agreement, and HI-USA agrees to repair any damage to the Premises caused by the removal of such items. If HI-USA fails to timely remove any such furniture, removable trade fixtures or equipment installed by HI-USA, those items will be deemed abandoned by HI-USA, and the City may dispose of such items in the manner it deems appropriate without liability to HI-USA. This Section 6.6 will survive the termination of this Agreement

7.0 Additional Covenants. As additional consideration for HI-USA's occupancy and use of the Premises, HI-USA will perform the services described on Exhibit B.

8.0 Hazardous Materials. HI-USA shall comply in all respects with all Governmental Regulations relating to the protection of environment and natural resources, now existing or hereafter enacted (collectively for purposes of this Agreement, "***Environmental Laws***"), including, without limitation: (a) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time, (b) the federal Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984, as amended from time to time, (c) the federal Water Pollution Control Act of 1972, as amended from time to time, (d) the federal Spill Compensation and Control Act of 1976, as amended from time to time, and (e) any and all other federal, state, county, and municipal laws, ordinances, codes and regulations which relate in any way to the matters regulated by any of the above-mentioned federal legislation. HI-USA shall immediately notify the City if HI-USA becomes aware of any actual or potential environmental hazard or any actual or alleged violation of one or more Environmental Laws. HI-USA is responsible for any and all liabilities, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including, without limitation, all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, any violation or alleged violation by HI-USA or any party accessing the Premises by or through HI-USA (whether before or after the Effective Date) of any one or more of the Environmental Laws. This Section 8.0 shall survive the expiration or termination of this Agreement. In the event either party becomes aware of any actual or potential environmental hazard or any actual or alleged violation of one or more Environmental Laws, the party may terminate the Agreement immediately by providing written notice to the other party, and such termination shall be without penalty.

9.0 Assignment and Sublicensing. HI-USA shall not (a) mortgage, assign, pledge or transfer this Agreement to any party; (b) sublicense the Premises or any part thereof; (c) grant any concession or other right of occupancy of any portion of the Premises; or (d) permit the use of the Premises by any parties other than HI-USA, its

agents, employees, volunteers and guests without the express prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion.

10.0 Indemnity. THE CITY WILL NOT BE LIABLE TO HI-USA, AND HI-USA HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, FOR ANY DAMAGE TO OR LOSS OR THEFT OF ANY PROPERTY OR FOR ANY BODILY OR PERSONAL INJURY, ILLNESS OR DEATH OF ANY PERSON IN, ON OR ABOUT THE PREMISES. HI-USA HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, DEMANDS, LIABILITIES, DAMAGES, LOSSES, COSTS AND EXPENSES, ARISING FROM OR RELATED TO ANY USE OR OCCUPANCY OF THE PREMISES, INCLUDING BUT NOT LIMITED TO USE OR OCCUPANCY BY CONCESSIONAIRES, ANY CONDITION OF THE PREMISES, ANY DEFAULT IN THE PERFORMANCE OF HI-USA'S OBLIGATIONS UNDER THIS AGREEMENT, ANY DAMAGE TO ANY PROPERTY, OR ANY BODILY OR PERSONAL INJURY, ILLNESS OR DEATH OF ANY PERSON OCCURRING IN, ON OR ABOUT THE PREMISES OR ANY PART THEREOF, ARISING AT ANY TIME, AND FROM ANY CAUSE WHATSOEVER, EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OR INTENTINAL MISCONDUCT OF THE CITY OR ITS OFFICERS OR EMPLOYEES.. THIS SECTION 10.0 WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.0 Insurance Requirements. HI-USA will obtain and maintain throughout the Term the types and in the amounts of insurance described on Exhibit C.

12.0 City's Right of Entry and Inspection; Use of Parking Lot. The City and its officers, agents and representatives shall have the right (but not the obligation) from time to time to enter into and upon any and all parts of the Premises at all reasonable hours (or, in an emergency, at any hour) to inspect, clean, or make repairs, alterations or additions to the Premises that the City may deem necessary or desirable; to observe HI-USA's operations; to plan for future uses of the Premises; and to conduct other municipal functions. Additionally, the City and the general public will have the right to use the parking lot adjacent to the Premises.

13.0 Condemnation.

13.1 If at any time during the Term all or substantially all of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, this Agreement shall terminate on the date of such taking. If less than all of the Premises shall be so taken and in the City's reasonable opinion the remaining portion of the Premises is insufficient for fulfilling the purposes of this Agreement, the City may terminate this Agreement by delivering written notice to HI-USA within sixty (60) days after the date the City received notice of the taking. If the City exercises its option to terminate, this Agreement shall end on the date specified in the City's notice.

13.2 If less than all of the Premises shall be taken and, in the City's reasonable opinion communicated by written notice to HI-USA within sixty (60) days after the date the City received notice of the taking, the remaining portion of the Premises is sufficient for fulfilling the purposes of this Agreement, this Agreement shall remain in effect. However, if such taking results in a reduction of the number of beds that HI-USA uses for hostel purposes, HI-USA shall be entitled to a proration in the License Fee equivalent to the extent of the taking in an amount to be agreed upon by the parties.

13.3 The City shall be entitled to receive the entire award or awards in any condemnation proceeding involving the Premises, and HI-USA shall receive no part of such award or awards from the City or in the condemnation proceedings. HI-USA hereby assigns to the City any and all of HI-USA's right, title and interest in or to such award or awards or any part thereof. This Section 13.3 will survive the termination of this Agreement.

13.4 Taking by condemnation or eminent domain hereunder shall include the exercise of any similar governmental power and any sale, transfer or other disposition of the Premises in lieu of or under threat of condemnation.

14.0 Fire and Other Casualty. If all or any portion of the Premises is damaged or destroyed by fire or other casualty, the City will have the right to terminate this Agreement by providing written notice to HI-USA. If the City exercises its option to terminate, this Agreement shall end on the date specified in the City's notice. The City will have no obligation to repair, restore or rebuild the Premises following damage or destruction due to fire or other casualty.

15.0 City's Remedies Following HI-USA Default. Any failure of HI-USA to comply with the terms and conditions of this Agreement will be deemed a default of this Agreement if HI-USA has not remedied such failure within thirty (30) days after receiving written notice of such failure from the City. If HI-USA is deemed to have committed a default, the City may (but is not obligated to) terminate this Agreement upon ten (10) days prior written notice to HI-USA, and the City may seek any other remedies available to it at law or in equity.

16.0 Non-Waiver.

16.1 Any act of forbearance by the City to enforce any provision of this Agreement shall not be construed as a modification of this Agreement or as a waiver of any breach or default of HI-USA which then exists or may subsequently exist. The failure of the City to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

16.2 All rights of the City under this Agreement are specifically reserved. Any payment, act or omission by a party shall not impair or prejudice

any remedy or right of that party under this Agreement. Any right or remedy stated in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement, the law or at equity. Any action taken in the exercise of any right or remedy shall not be deemed a waiver of any other rights or remedies.

17.0 Entire Agreement. This Agreement constitutes the entire agreement between the City and HI-USA with regard to the Premises. Any other statement, representation, agreement (including, without limitation, that certain Agreement dated August 4, 1988 between the City and HI-USA's predecessor in interest relating to the occupancy and use of the Premises) or promise, either oral or written, relating to the subject matter of this Agreement that is not contained herein shall not be binding on the Parties. All exhibits, schedules, addenda and other documents attached to this Agreement are intended to be a part of this Agreement and are hereby incorporated into this Agreement for all purposes.

18.0 Governing Law and Venue. This Agreement and the rights and duties of the City and HI-USA will be governed by Texas law. All obligations under this Agreement are performable in Travis County, Texas, and venue for any litigation arising under or in connection with this Agreement shall lie exclusively in Travis County, Texas.

19.0 Notices.

(a) Any notice given hereunder by either Party to the other shall be in writing and may be delivered by personal delivery or by registered or certified mail, return receipt requested, when mailed to the proper Party, at the following addresses:

If to the City: Sara L. Hensley, CPRP  
Director  
Austin Parks and Recreation Dept.  
200 S. Lamar Blvd.  
Austin, Texas 78704

with a copy to: Lauraine Rizer  
Officer  
City of Austin Office of Real Estate Services  
P.O. Box 1088  
Austin, Texas 78767

If to HI-USA:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

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(b) Either Party may change its address for purposes of this Section 19.0 by written notice delivered in accordance herewith.

20.0 Force Majeure. The computation for any period for performance under this Agreement shall exclude any delays due to acts of God, war, riot, terrorism, civil commotion, sovereign conduct, or governmental laws, regulations or restrictions.

21.0 Severability. If any clause or provision of this Agreement is ruled illegal, invalid or unenforceable in any respect by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and binding. It is also the intention of the Parties to this Agreement that in lieu of each clause or provision of this Agreement that is ruled illegal, invalid or unenforceable, there be added as a part of this Agreement a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as is possible.

22.0 Amendments and Binding Effect. This Agreement may not be amended, except in writing signed by both Parties. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors, assigns and legal representatives.

23.0 Gender and Number. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, unless the context otherwise requires.

24.0 Captions. The captions in this Agreement are for convenience of reference only and shall not in any way limit or enlarge the terms and conditions of this Agreement.

[The signature page follows.]



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF AUSTIN, a Texas home-rule city  
and municipal corporation

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HI-USA:

HOSTELLING INTERNATIONAL, a New  
York non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**{Map and legal description to be added}**

DRAFT

## **EXHIBIT B**

On April 5, 2012, within a Chapter 26 hearing under the Texas Parks and Wildlife Code, it was determined that it was an appropriate use of Premises, parkland, for non-park purposes by Licensee to operate a youth Hostel under a finding that there is no feasible and prudent alternative to the use of this land at this time. Given this determination and the approval by the City Council at this hearing for such use, Licensee intends to so utilize the Premises for operation as a youth Hostel.

Youth Hostels by their nature bring individuals from all walks of life together to a distinct physical location from which, as travelers, they set out to discover more about the world and the people around them through engaging themselves with not only the locale but also with the locals they meet in their travels. A youth Hostel by being a center for more than just overnight accommodations by design creates opportunities for local engagement by providing travelers with access to individuals with ties to the local area who in their interactions with these travelers promote increased usage by these travelers of local area facilities and amenities, including local parks. As the Premises are physically located within the boundaries of the park, the Hostel's location alone will encourage greater use of the park by travelers utilizing the Premises to visit the City of Austin.

Beyond this, public benefit, Licensee further acknowledges that the Park is an asset of the local general public and that the grant of a license to utilize the Premises for use as a youth Hostel represents an extension of the public's goodwill to it. Therefore, Licensee desires to in addition to the other obligations contained in this agreement use its best efforts to satisfy the following additional covenants in furtherance of the promotion of local park utilization for the benefit of the general public:

1. Licensee will provide safe, affordable alternative accommodations to world travelers;
2. Licensee will continue to share information about Austin parks with the travelers utilizing the youth Hostel;
3. Licensee will continue to partner with Keep Austin Beautiful and host park and lakeside clean ups around the Hostel, as well as invite the general public to volunteer to assist with these clean ups;
4. Licensee will provide on Premises park related information upon request to members of the general public;
5. Licensee will maintain on Premises in a location accessible by the general public a bulletin board upon which the general public can post local park events;
6. Licensee will develop and maintain partnerships including but not limited to Girl Scouts, Recreational Equipment, Inc. (REI) and Keep Austin Beautiful; and
7. Licensee will provide community education programs for youth and adults such as cultural kitchen programs and travel classes.

## **EXHIBIT C**

### **Insurance Requirements**

#### **ARTICLE 1 Licensee's Insurance Requirements**

**1.1. General Requirements:** Licensee shall carry insurance in the types and amounts indicated below for the term of the Agreement.

Within five (5) days of the execution of this Agreement, Licensee shall obtain the required insurance and provide the City a Certificate of Insurance as proof of coverage. If coverage period ends during the term of the Agreement, Licensee must, prior to the end of the coverage period, forward a new Certificate of Insurance to City as verification of continuing coverage for the duration of this Agreement.

Approval of insurance by the City and the required minimums does not relieve or decrease the liability or responsibility of the Licensee hereunder and will not be construed to be a limitation of liability on the part of the Licensee.

Insurance coverage must: (a) be written by companies licensed to do business in the State of Texas at the time the policy is issued, and (b) with an A.M. Best rating of B+VII or better.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall indicate:

City of Austin, Parks and Recreation Department  
Attention: Contract Management  
200 S. Lamar  
Austin, Texas 78704

The "Other" insurance clause does not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Licensee, will be considered primary coverage as applicable.

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

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.

City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by City based upon changes

in statutory law, court decision, the claims history of the history of the industry or financial condition of the insurance company as well as the Licensee.

Licensee shall not cause or permit any insurance to lapse or to be canceled during the term of this Agreement.

Licensee shall be responsible for premiums, deductibles and self-insured retention's, if any, stated in policies. All deductibles or self-insured retention's will be disclosed on the Certificate of insurance.

## **1.2 Specific Coverages:**

**Commercial General Liability Insurance** with a minimum bodily injury and property damage per occurrence limit of \$1,000,000 for coverages A & B. The policy must contain the following provisions:

- a) Contractual liability coverage for liability assumed under the Agreement and all contracts relative to this Agreement
- b) Independent Contractors coverage
- c) City listed as an additional insured, endorsement CG 2010 or equivalent coverage
- d) Thirty (30) Day Notice of Cancellation in favor of City, endorsement CG 0205 or equivalent coverage
- e) Waiver of Transfer of Recovery Against Others in favor of City, endorsement CG 2404 or equivalent coverage

**Business Automobile Liability Insurance** for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of the City of Austin:

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

**Property Insurance** to provide coverage for all real and personal property related to this agreement. All risk property coverage including but not limited to fire, wind, hail, theft, vandalism, and malicious mischief for all real and personal property owned and/or acquired by Borrower for the Agreement. The coverage shall be at replacement cost with a 100% coinsurance clause for a limit of liability established by the City. The City shall be a mortgage/loss payee on the policy As Their Interest May Appear.

**Directors and Officers Insurance,** if applicable, with a minimum limit of \$1,000,000 per claim to pay for claims arising out of negligent acts, errors or omissions for directors

and officers while acting in their capacity as such. If coverage is written on a claims made basis, the retroactive date shall be coincident with or prior to the date of the Agreement and the certificate of insurance shall reflect this date. The coverage shall be continuous for the duration of the Agreement and for not less than twenty four (24) months following the end of the Agreement. Coverage, including renewals shall have the same retroactive date as the original policy applicable to the Agreement.

## ARTICLE 2 Lessor's Commercial General Liability Insurance

**2.1** Licensee understands that Lessor is a self-insurer and does not maintain commercial general liability insurance coverage.

## **ARTICLE 3: Requirements for Contractors performing work on the Premises**

### **3.1 General Requirements:**

Contractor's insurance coverage must be written by companies: (a) licensed to do business in the State of Texas at the time the policies are issued, and (b) with an A.M. Best rating of B+VII or better.

All endorsements such as additional insured, waivers, and notices of cancellation endorsements as well as the attached certificate shall indicate naming the City of Austin as follows:

City of Austin, Parks and Recreation Department  
Attention: Contract Management  
200 S. Lamar  
Austin, Texas 78704

The "other" insurance clause does 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 the City and the Contractor, will 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 must 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 Temporary Use 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 will 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 coverages indicated within the Contract.

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

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

**3.2 Specific Coverages:** Insurance Requirements for any agreements containing provisions for contractors cleaning, maintaining, repairing or working on Premises:

Contractor shall carry insurance in the types and amounts indicated below for the duration of the Contract, which includes items owned by the City in the care, custody and control of the Contractor prior to and during the period during which services are provided.

(1) **Workers' Compensation and Employers' Liability** 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 must 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 coverages A & B. The policy must contain the following provisions:

- (a) Contractual liability coverage for liability assumed under this contract and all contracts relative to this Temporary Use Agreement.
- (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 shown 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 *(amount to be determined based upon scope of work)* 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.