

PARKLAND IMPROVEMENT AND MAINTENANCE AGREEMENT
(Name of Park)

This Parkland Improvement and Maintenance Agreement (Name of Park) (the "**Agreement**") is entered into by and between the **CITY OF AUSTIN, TEXAS**, a Texas home-rule municipal corporation (the "**City**"), and _____ ("**Partner**").

RECITALS

Partner is the owner of the real property described in **Exhibit A** and located in the City of Austin (the "**Property**").

Subject to the terms of this Agreement, Partner will construct the improvements described in **Exhibit B** (the "**Park Improvements**") in the portion of the Property described in **Exhibit C** (the "**Park**").

Following completion of the Park Improvements, Partner will maintain the Park Improvements and the Park and will execute an easement granting the City an easement in and to the Park.

OR

Following completion of the Park Improvements, Partner will maintain the Park Improvements and the Park and will convey the Park and the Park Improvements to the City by deed.

Choose
just one of
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NOW, THEREFORE, for and in consideration of the mutual promises and covenants expressed herein, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement and in any exhibit incorporated in it, the following terms have the meanings assigned to each:

Association means any condominium, apartment, or property owners' association created by Partner or its successors or assigns.

Contractors mean Partner's or Partner's successors and assigns (including the Association) contractor(s) or subcontractor(s), their employees, agents, materialmen, suppliers, and assigns employed to construct and/or maintain the Park Improvements and/or Park.

Director means the Director of Austin Parks and Recreation of the City of Austin.

Effective Date means the last date of execution of this Agreement by the Parties, provided both Parties must execute this document in order for it to be effective.

Insurance Requirements means the insurance coverages required to be maintained by Partner as described in **Exhibit D**, which is incorporated into and made a part of this Agreement for all purposes.

Lender means a person, governmental agency, financial institution of any kind, insurance company, finance company, or any other entity has made or will make a loan, advance, or credit sale secured by a lien or liens on the Property, and any assignee or transferee, in whole or in part, of such person or entity.

Maintenance Requirements means the requirements set forth in **Exhibit E** to this Agreement that Partner must adhere to in maintaining the Park Improvements and the Park.

APAR means the Austin Parks and Recreation.

Park Rules means the applicable requirements and conditions of Chapter 8-1 of the Austin City Code, as it may be amended from time to time, relating to the administration of public parks, and the guidelines and rules established by APAR for the use and enjoyment of public parks, as they may be amended from time to time, and any successor to such Code, guidelines or rules.

Park Specs means the Construction in Parks Specifications set forth in Section 5 of the City's Environmental Criteria Manual, as they may be amended or waived in writing by APAR from time to time, that Partner must adhere to in constructing the Park Improvements.

Party means either the City or Partner and its successors and assigns, including without limitation the Association; collectively, the City and Partner are the "**Parties**."

Partner means _____ and its successors and assigns, including the Association and the Lenders, if any.

II. TERM

The term of the Agreement begins on the Effective Date and, unless terminated in accordance with other provisions of the Agreement, continues for an initial period of twenty (20) years. Thereafter, the Agreement will automatically renew every five years unless terminated in accordance with other provisions of the Agreement; provided, however, that either party may choose not to renew and may terminate the Agreement by providing written notice to the other party at least 12 months prior to the expiration of the then-current term. The initial term of 20 years and any renewals are, collectively, the "**Term**."

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III. DESIGNATION OF PARTY REPRESENTATIVES

The City designates the Director as its authorized representative to act on the City's behalf with respect to this Agreement. Partner designates _____ to act on its behalf with respect to this Agreement.

If Partner replaces its authorized representative, Partner shall promptly send written notice of the change to the City's authorized representative. The notice shall identify a qualified and competent replacement and provide contact information.

IV. PARTNER'S DESIGN, COST AND CONSTRUCTION RESPONSIBILITIES

- A. Partner will submit a conceptual description of the Park Improvements (the "**Conceptual Plans**") to the City for approval. The City will respond to the Conceptual Plans by approving, conditionally approving subject to additional requirements, or rejecting them.
- B. Upon final approval of the Conceptual Plans, Partner will submit construction plans and a construction schedule for the Park Improvements (the "**Park Construction Plans**"). The City will approve, conditionally approve subject to additional requirements, or reject the Park Construction Plans. Upon final approval of the Park Construction Plans, APAR will issue a notice to proceed. Partner will not undertake any work on the Park Improvements until it receives such notice.
- C. Upon completion of the Park Improvements, Partner will notify the City by e-mail that they have been completed (the "**Completion Notice**"). Within twenty-one (21) calendar days, or such additional time as the Parties may agree to in writing, of receipt of the Completion Notice the City will provide a list of items still requiring completion or accept the Park Improvements. Upon final acceptance of the Park Improvements, APAR will issue an "**Acceptance Letter**." Failure to respond to a Completion Notice within the 21 calendar days, or the additional time agreed to in writing by the Parties, will be deemed acceptance by the City.
- D. Partner will comply with all applicable City ordinances, rules and regulations, including the Park Rules and the Park Specs, in connection with permits and approvals for construction of the Park Improvements and in connection with the actual construction of the Park Improvements; provided, however, that nothing in this Agreement will prevent or prohibit Partner from seeking or securing exceptions from, variances to, or waivers of such ordinances, rules and regulations, including the Park Rules and the Park Specs.

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- E. Except as otherwise provided in the approved Park Construction Plans, Partner will comply with the applicable Park Rules for all removal, cutting, and/or pruning of trees in the Park.
- F. Neither Partner nor its Contractors will cause or permit any hazardous materials to be brought upon, kept, used, stored, generated, or disposed of in, on, or about the Park, or transported to or from the Park.
- G. Partner will obtain from each of its Contractors a written warranty or bond acceptable to the City and warranting that any work performed or materials supplied with respect to the Park Improvements will be free of defects for at least one year from the date of the Acceptance Letter. Each warranty or bond will be assigned to the City, without further recourse against Partner, except that Partner will maintain the right to enforce such warranties during the Term.
- H. Partner has no right, authority, or power to bind the City for labor, materials, or any other charge or expense incurred in the construction of any improvements or other work done in the Park; provided, however, that a mortgage lien on the Property does not violate this paragraph. If a lien or claim for labor or materials supplied, or claimed to have been supplied, to the Park Improvements or the Park is filed, Partner will promptly pay or bond such lien or claim to the City's reasonable satisfaction or otherwise obtain the release or discharge of the lien or claim.
- I. Partner and its Contractors will perform the obligations set forth in this Agreement as independent contractors.
- J. Partner will not discriminate against any Contractors or applicants for employment because of race, creed, color, national origin, sex, age, religion, veteran status or sexual orientation. Partner will take affirmative action to ensure that Contractors are treated during the construction of the Park Improvements or maintenance of the Park without regard to race, creed, color, national origin, sex, age, religion, veteran status or sexual orientation. Partner will, in all solicitations or advertisements for employment placed on or behalf of Partner, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, religion, veteran status, or sexual orientation.

- K. The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred, or whose principals are suspended or debarred, from entering into federal, State, or City contracts. By entering into this Agreement with the City, Partner certifies that neither it nor its principals are currently suspended or debarred from doing business with the federal government, as indicated by the General Services Administration's List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City.
- L. Unless otherwise agreed to in writing by the City, Partner will be responsible for all costs associated with the Park Improvements. Any increases in the actual costs of the Park Improvements, including cost increases, change orders and overruns, will be borne by Partner, unless otherwise agreed to in writing by the City. "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, legal fees, utility connection fees, permits, inspection fees, insurance costs and any other costs incurred in the design and construction of the Park Improvements.
- M. At the City's written request and prior to beginning construction of the Park Improvements, Partner will provide 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 or a construction budget approved by the construction lender funding the costs of construction of the Park Improvements.
- N. In addition, Partner will comply with the accessibility provisions of (i) the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., (ii) the Texas Architectural Barriers Act, Texas Govt. Code Chap. 469, (iii) the Americans with Disabilities Act Accessibility Guidelines, and (iv) the Texas Accessibility Standards.

V. PARTNER'S MAINTENANCE RESPONSIBILITIES

- A. Subject to the other terms and provisions of this Agreement, including without limitation Sections VI and XI below, Partner shall be responsible for the maintenance of the Park Improvements and the Park and shall keep and maintain, or cause to be kept and maintained, and operate, or cause to be operated, the Park Improvements and the Park in a good state of appearance and repair (except for reasonable wear and tear), in compliance with the Maintenance Requirements set forth in Exhibit E, all at the sole expense of Partner.

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- B. In the event Partner fails to perform some or all of its maintenance obligations under this Agreement, as determined by the City in its sole and reasonable discretion, the City may, but is not obligated to, assume such obligations on a permanent or temporary basis. In such event, Partner shall indemnify the City for all City costs incurred to maintain the Park and the Park Improvements.
- C. Subject to the approval of the Director or the Director's designee (such approval not to be unreasonably withheld, conditioned or delayed), Partner shall submit an annual cost estimate to fund the maintenance and operation of the Park Improvements and the Park and shall provide proof that it has the ability to pay for all costs incurred under this Agreement. Such proof may include an independently certified financial statement or a maintenance budget approved by the construction lender funding the maintenance of the Park Improvements. Partner shall maintain annual cost estimates and proof of the ability to pay throughout the duration of park maintenance and operation obligations. Partner shall give 180-days' notice of intent to cease maintenance and operation of the Park Improvements and the Park, during which time Partner shall pay for all costs for maintenance and operation per this Agreement. The City will, upon reasonable notice to Partner, have the right at any time during the term of this Agreement to inspect, reproduce, or audit the books, statements, and financial records of Partner to determine ability to pay for park maintenance and operation costs.
- C. Partner will not charge admission fees, concession fees, rent, or other charges for use of the Park Improvements or the Park.
- D. If either Party believes the Park Improvements and/or the Park are being overused, it will promptly notify the other Party. If the other Party agrees that the Park Improvements and/or the Park are being overused, the Parties will work in good faith to develop a mutually agreeable plan to alleviate the overuse.
- E. The City has the right to approve any company hired or otherwise placed under contract by Partner for the maintenance of the Park Improvements and the Park, such approval not to be unreasonably withheld, conditioned, or delayed. Partner will provide to the City name of the individual or company, their contact information, the work plan, and evidence that the individual or company is bonded and insured. Partner shall notify the City within 30 calendar days if the company hired or placed under contract for maintenance of the Park Improvements changes.

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VI. RESPONSIBILITIES OF THE CITY

- A. The City grants Partner and its Contractors the right to enter the Park (the “**Temporary Right of Entry**”) and a temporary license for access over, under, across, and upon the Park for the purpose of constructing and maintaining the Park Improvements (the “**Temporary Access License**”). The Temporary Right of Entry and Temporary Access License, unless extended in writing by Director, shall expire automatically at midnight on the date this Agreement is terminated. This right of entry relates solely to Partner’s rights related to the design, construction, and maintenance of the Park Improvements. The parties agree that Partner and Partner’s licensees, guests, and invitees shall have the same access and rights to use the Park as public parkland as the public and shall have access to the Park from 5 A.M. until 10 P.M., seven days a week.
- B. APAR staff will assist in securing all permits and approvals necessary to construct the Park Improvements. Partner and its Contractors will coordinate with APAR staff to provide information that is necessary or that will facilitate applications for permits and approvals.
- C. Following the City’s issuance of the Acceptance Letter, the City may, in its sole discretion, undertake maintenance in the Park, repair or modify the Park Improvements, or construct additional improvements, provided the City gives at least 60 days written notice to Partner before commencement of any non-emergency repair, modification, or construction.
- D. The City retains the right to inspect construction of the Park Improvements and to exercise its rights or duties in order to ensure compliance with applicable laws in the Park. The City may conduct periodic and regular inspections of the Park Improvements and the Park to ensure that Partner is complying with fire, safety and sanitation regulations and other applicable provisions contained in this Agreement, City Code, City criteria manuals, and APAR rules. The City will notify Partner of its findings and specify any items needing attention in order to comply with legal requirements.
- E. The City retains the right to close the Park and/or the Park Improvements to the public if the City, in its sole discretion, determines that a condition of the Park and/or the Park Improvements poses an immediate, serious threat to the public health or safety. In such a circumstance, the City will provide Partner with notice of, and the reason for, the closure as soon as reasonably practicable, but is not required to provide notice to Partner prior to the closure.

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**VII. EXECUTION OF PARK EASEMENT
OR
VII. CONVEYANCE OF PARK**

Within 21 calendar days of Partner's receipt of the Acceptance Letter described in Section IV(C), Partner will execute and deliver to APAR an easement granting the City an easement in and to the Park, and APAR will accept and record the easement; provided, however, that if the City does not respond to Partner's Completion Notice (as described in Section IV(C)) within 21 calendar days of receipt, Partner will execute the easement within 42 calendar days of sending the Completion Notice to the City, and the City will accept and record the easement.

OR

Within 21 calendar days of Partner's receipt of the Acceptance Letter described in Section IV(C), Partner will execute and deliver to APAR a special warranty deed conveying the Park to the City, and APAR will accept and record the deed; provided, however, that if the City does not respond to Partner's Completion Notice (as described in Section IV(C)) within 21 calendar days of receipt, Partner will execute the special warranty deed within 42 calendar days of sending the Completion Notice to the City, and the City will accept and record the deed.

Choose
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VIII. CHANGE IN USE OF PARKLAND

- A. If, after the City has issued the Acceptance Letter described in Section IV(C) above, Partner wishes to undertake additional alterations, improvements, or new construction work (including, but not limited to, utilities or signage) to the Park Improvements and/or the Park, Partner will first obtain written approval from the Director, such approval not to be unreasonably withheld, conditioned, or delayed. If such additional work requires new permits or site plan corrections, APAR staff will timely and reasonably review such plans or corrections.
- B. If the additional work Partner intends to undertake pursuant to Section VII(A) above will result in a change in use of the Park (or any part of it), such that it will no longer be used as parkland, then Partner may only perform such work if the City completes a public hearing pursuant to Texas Parks and Wildlife Code Chapter 26 and the City Council has approved the change in use. Partner is responsible for providing sufficient evidence to enable the City Council to make the legally required findings that (i) there is no feasible and prudent alternative to the use or taking of the Park and (ii) all reasonable planning has been undertaken to minimize harm to the Park. Unless otherwise agreed to in writing by the City, Partner is also responsible for all costs associated with the Chapter 26 hearing, including the publication costs and the mitigation fee. Partner will comply with the Park Rules and other City ordinances and regulations related to restoration and revegetation, route selection, and general construction specifications.

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- C. In performing or conducting the activities described in Section VI(A) above, Partner will minimize the impact of such activities on the use of the Park Improvements and the Park to the greatest extent feasible. In addition, except for routine day-to-day maintenance and operation, Partner will reasonably notify and coordinate with the Director regarding these activities.

IX. LIABILITY AND INDEMNIFICATION

- A. **PARTNER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS OFFICERS, APPOINTED OR ELECTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (THE “INDEMNIFIED PARTIES”) AGAINST ALL COSTS, LIABILITIES, DAMAGES, CLAIMS, SUITS, ACTIONS, AND CAUSES OF ACTIONS (THE “CLAIMS”), ARISING, DIRECTLY OR INDIRECTLY, OUT OF (A) A BREACH OF THIS AGREEMENT OR VIOLATION OF LAW BY PARTNER, ITS OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, (THE “PARTNER PARTIES”); (B) A FALSE REPRESENTATION OR WARRANTY MADE BY THE PARTNER PARTIES IN THIS AGREEMENT; OR (C) THE NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF A STANDARD OF STRICT LIABILITY BY THE PARTNER PARTIES IN CONNECTION WITH THIS AGREEMENT. CLAIMS TO BE INDEMNIFIED UNDER THIS ARTICLE INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS FOR BODILY INJURY OR DEATH, OCCUPATIONAL ILLNESS OR DISEASE, LOSS OF SERVICES WAGES OR INCOME, DAMAGE, DESTRUCTION OR LOSS OF USE OF PROPERTY, AND WORKERS’ COMPENSATION CLAIMS. PARTNER’S OBLIGATIONS UNDER THIS ARTICLE ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR WILLFUL MISCONDUCT OF THE INDEMNIFIED PARTIES.**
- B. The City shall give Partner written notice of a Claim asserted against an Indemnified Party. Partner shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense of all Claims against the Indemnified Parties. The Indemnified Parties shall have the right (but not the obligation) to participate in the defense of any claim or litigation with attorneys of their own selection without relieving Partner of any obligations in this agreement. In no event may Partner admit liability on the part of an Indemnified Party without the written consent of City Attorney

- C. Maintenance of the insurance required under this Agreement will not limit Partner's obligations under this Article. Partner will require all successors and assigns to indemnify the City as provided in this Article. Partner will require any volunteer who performs work within the Park to sign a Volunteer Release Form as provided by APAR.

X. INSURANCE

During the Term, Partner will require its Contractors to procure and maintain in full force and effect insurance coverages in accordance with the requirements set forth in **Exhibit D**.

XI. SUSPENSION; TERMINATION; DEFAULT; REMEDIES

- A. At any time during construction of the Park Improvements and for good cause, as determined in the City's sole discretion, the City may suspend the work (or any portion of it) for not more than ninety (90) calendar days by providing at least fifteen (15) calendar days' written notice to Partner. The notice will provide the date on which Partner will resume the work, and Partner will resume on that date.
- B. Either Party may terminate this Agreement for convenience with 180 calendar days written notice to the other Party. Upon receipt of the notice, the Party receiving the notice will immediately stop performance of services (unless the Notice directs otherwise) and deliver all documents, programs, reports, and materials accumulated in performing this Agreement (whether finished or in process) to the Party giving the notice within thirty (30) calendar days, or as otherwise stated in the Notice. If Partner terminates this Agreement prior to the City's issuance of the Acceptance Letter, then Partner will pay all outstanding costs and obligations incurred in connection with construction of the Park Improvements up to the date of termination.
- C. If either party breaches its obligations under this Agreement, the other party will notify the breaching party in writing of the specific breach(es). The breaching party will have thirty (30) calendar days from receipt of the notice in which to cure the breach(es). If the breach cannot be reasonably cured within the 30 calendar days and the breaching party has diligently pursued such remedy as is reasonably necessary to cure the breach, then the parties may agree in writing to an extension of the period during which the breach must be cured.

- D. If the breach is a material breach of the Agreement, and if the breaching party has not cured it within the required time, then the non-breaching party, at its sole option, has the right to terminate the Agreement. This termination will be made by sending written notice (the “**Notice of Termination**”) to the breaching party and will be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.
- E. Upon termination of this Agreement in accordance with its terms, the City may, but is not obligated to, assume possession and control of the Park Improvements, the Park and/or any contract documents or contract rights related to construction or maintenance of the Park Improvements and/or the Park. In such event, Partner will be relieved of liability for any claims, injuries or losses resulting from negligent acts or omissions of the City, its employees, or agents.
- F. In the event of a material breach by Partner, termination of the Agreement pursuant to Section XI(C) above does not relieve Partner of its obligation to pay any sum or sums due and payable to the City under the Agreement at the time of termination, or any claim for damages then or previously accruing against Partner under the Agreement. Any such termination will not prevent the City from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Partner for any default under the Agreement. All of the City’s rights, options, and remedies under this Agreement are cumulative, and none of them is exclusive of any other.

XII. FORCE MAJEURE

- A. Each Party to this Agreement agrees to excuse the failure of the other Party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the Party, and which the Party could not use due diligence to avoid or prevent. Events of Force Majeure include:
 - i. The total or partial destruction of the Park or the Park Improvements by any cause, casualty, or unforeseen occurrence;
 - ii. The imposition of local, State or federal measures, orders, declarations, travel restrictions, quarantines, or isolation in response to the outbreak of an infectious disease, epidemic or pandemic in the City that involves, includes, or affects the Park, the Park Improvements, or the ability to appropriately deploy employees or contractors;
 - iii. Lightning, earthquakes, fires, storms, floods, and landslides;

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- iv. An act of terrorism, strike, sabotage, civil disturbance, or disaster declaration;
- v. Circumstances beyond the Party's control that render the Party's performance impossible.

Force Majeure does not include economic or market conditions which affect a Party's cost but not its ability to perform.

- B. The Party invoking Force Majeure shall give timely and adequate notice to the other Party of the event by telephone or e-mail, and then the Party must promptly provide written notice of the Force Majeure in the manner required by this Agreement. The Party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a Party's performance is delayed by the event of Force Majeure, the Parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event; provided, however, that if a Party is unable to perform for more than 90 days, the non-affected Party shall have the right to terminate this Agreement upon written notice to the affected Party delivered prior to the date that performance resumes.

XIII. CONDITION OF PREMISES; DISCLAIMER OF WARRANTIES

Except as otherwise expressly provided in this Agreement, neither the City nor any agent, employee, or representative of the City makes or has made any warranties or representations, express or implied, with respect to the physical condition of the Park or its fitness or suitability for any particular use.

XIV. NO WAIVER

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

XV. NO RECOURSE

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

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XVI. ASSIGNMENT

- A. Partner shall not assign (it being agreed that for purposes of this Agreement, assignment includes, without limitation, a merger, dissolution, sale of stock or sale of assets), mortgage, pledge or otherwise transfer its interests in this Agreement without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Partner acknowledges that the City must be assured that any assignee has the financial and development capabilities to satisfy its obligations under the Agreement and if such assignee does not have such capabilities, the City may require a guaranty or similar assurance of such obligations. The City shall not assign or transfer its interest in this Agreement without the prior written consent of Partner, which consent may be withheld in Partner's sole and absolute discretion.
- B. Notwithstanding the provisions of Section XVI(A) above, the Parties agree that assignment of this Agreement to a Foreclosure Assignee(s) (as defined in Section XVIII(B) below) shall be solely governed by Section XVIII(B) below.

XVII. DISPUTE RESOLUTION

- A. In the event of a dispute, the Parties agree to attempt in good faith to informally negotiate a resolution. Either Party may make a written request for a meeting between representatives of each Party, and the meeting will occur within 14 calendar days after receipt of the request, or at such time as agreed by the Parties. The parties may agree in writing to additional meetings, and each Party will send at least one representative with decision-making authority to each meeting. If the Parties have not succeeded in negotiating a resolution of the dispute within 30 days of the last meeting, they shall proceed directly to mediation as described below. Informal negotiation may be waived by a written agreement signed by both Parties, in which event the Parties shall proceed directly to mediation as described below.
- B. The Parties will act in good faith to select a mediator within 30 calendar days of the date of the written agreement waiving informal negotiations or within 60 calendar days of the last informal negotiation meeting. If the time period for selecting a mediator has expired with no agreement, the mediator shall be selected by the Travis County Dispute Resolution Center. Mediation will take place in Austin, Texas and the Parties will share the costs of mediation equally. The Parties agree to participate in mediation in good faith for up to 30 calendar days from the date of the first mediation session. Neither Party may file suit until at least 45 calendar days after the date of the first mediation session.

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XVIII. LENDER PROTECTIONS

- A. Upon Lender's written request, City agrees to notify the Lender(s) in writing of any default under this Agreement simultaneously with notice sent to Partner and allow Lender(s) an additional thirty (30) days to cure such default after expiration of Partner's cure periods prior to the City exercising any rights or remedies by reason of such default, provided, however, that any health and safety default cure period may be less than thirty (30) days, as set out in the notice of default.
- B. Notwithstanding the provisions of Section XVI above, all of Partner's rights in this Agreement may be assigned without consent of the City to any party or parties that acquire the Partner's interest in the Property by a foreclosure or a conveyance in lieu of foreclosure (the "**Foreclosure Assignee(s)**"). The Foreclosure Assignee(s) shall provide notice in writing to the City of the assignment within ten (10) days of execution of the assignment document.

XIX. 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, will have no force or effect.
- B. Each Party warrants and represents 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 creditor's rights, or, with respect to the City, governmental immunity under the Constitution and laws of the State of Texas.
- C. The Parties bind themselves and their successors in interest, assigns and legal representatives to this Agreement.
- D. Regardless of the actual drafter of this Agreement, this Agreement will, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for nor against any party.

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- E. This Agreement may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts constitute one agreement, and each counterpart is deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in pdf format shall be legal and binding and shall have the same full force and effect as if an a paper original of this Agreement had been delivered and had been signed using a handwritten signature. City and Partner (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile or, electronic mail, or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this document are expressly consenting under the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), and Uniform Electronic Transactions Act (“UETA”), that a signature by fax, email or other electronic means shall constitutes an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.
- F. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts will remain in full force and effect.
- G. This Agreement is made, and will be construed and interpreted under, the laws of the State of Texas. Mandatory venue for any lawsuit arising out of this Agreement shall be in a court located in the City of Austin, Travis County, Texas.
- H. This Agreement may be amended only by a writing properly executed by each of the Parties. Provided the amendment does not increase the sum to be paid by the City to an amount in excess of the then-current administrative authority of the City Manager, and the form of amendment is approved by Austin City Attorney’s Office, 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.

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- I. Partner acknowledges that the City has provided notice of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to the City for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.
- J. Partner acknowledges that the City has provided notice that the City's payment obligations to Partner, if any, are payable only from funds appropriated or available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide Partner notice of the failure of City to make an adequate appropriation for any fiscal year to pay the amounts due under the Agreement or the reduction of any appropriation to an amount insufficient to permit City to pay its obligations under the Agreement.
- K. All official communications and notices required to be made under this Agreement will be deemed made if sent, postage prepaid, to the parties at the addresses listed below:

If to the City:

Director
Austin Parks and Recreation
City of Austin
P. O. Box 1088
Austin, Texas 78767

If to Partner:

[Signature page follows]

[Name of Partner]

By: _____

Name: _____

Title: _____

Date: _____

CITY OF AUSTIN, TEXAS

PARKS AND RECREATION

By: _____

Jesús Aguirre, Director

Date: _____

Attachments:

Exhibit A – Legal Description of Property

Exhibit B – Park Improvements

Exhibit C – Location and Boundaries of Park

Exhibit D – Insurance Requirements

Exhibit E – Maintenance Requirements

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EXHIBIT A
Legal Description of Property

EXHIBIT B
Park Improvements

EXHIBIT C
Location and Boundaries of Park

EXHIBIT D
Insurance Requirements

Partner and its Contractors are required to carry workers' compensation insurance, and general liability insurance with combined single coverage limits in an amount of not less than \$1,000,000.00 per occurrence. Within thirty (30) days of executing this Agreement, and prior to any maintenance activities in the Park, Partner shall furnish to the City the following current certificates of insurance:

- A. Commercial General Liability insurance with a minimum bodily injury and property damage per occurrence limit of \$500,000 for coverages A & B. The policy shall contain the following provisions:
 - 1. Blanket contractual liability coverage for liability assumed under this contract and all contracts relative to this Agreement.
 - 2. Completed Operations/Products Liability for the duration of the warranty period.
 - 3. Explosion, Collapse, and Underground (X, C, & U) coverage.
 - 4. Independent contractors' coverage.
 - 5. City of Austin listed as an additional insured, endorsement CG 2010.
 - 6. 30-day Notice of Cancellation in favor of the City of Austin, endorsement CG 0205.
 - 7. Waiver of Transfer Right of Recovery Against Others in favor of the City of Austin, endorsement CG 2404.
- B. 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:
 - 1. Waiver of Subrogation, endorsement TE 2046A.
 - 2. 30-day Notice of Cancellation, endorsement TE 0202A.
 - 3. Additional Insured endorsement TE 9901B.

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- C. All Contractors and subcontractors providing services in the Park shall carry insurance in the types and amounts indicated below for the duration of their contracts.
- D. Specific Requirements for Partner Contractors and Subcontractors:
1. Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with the statutory benefits outlined in the Texas Workers' Compensation Act (Section 401) and minimum policy limits for employer's 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 the following 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 shall contain the following coverages:
 - 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.

EXHIBIT E
Park Maintenance Standards of Care
Level 3 – Urban Parks

Pick level of service

- A. During the Term, Partner shall continuously maintain the Park and the Park Improvements in a good, functioning and safe condition in compliance with all applicable laws and the requirements of the City as set forth in this Exhibit E (collectively, the “Maintenance Obligations”), all at Partner’s sole expense. If Partner does not perform the Maintenance Obligations, Partner agrees: (a) that the City at its option may perform the Maintenance Obligations and (b) to indemnify the City for all City costs necessary to perform the Maintenance Obligations.
- B. During the Term, Partner shall keep and maintain, or cause to be kept and maintained, and operate the Park Improvements and the Park in a good state of appearance and repair (except for reasonable wear and tear); and shall comply with the Maintenance Obligations, including, but not limited to:
1. Routine and Preventative Maintenance. Partner shall at all times during the Term provide routine and preventative maintenance to keep the Park clean, sanitary, functional, and safe.
 2. Capital and Emergency Repairs. Partner shall, its sole expense make capital and emergency repairs to the Park Improvements assets and infrastructure required during the lifetime of an asset due to normal usage, vandalism, special events, or damage caused by Partner’s operations and/or programs.
 3. Chemicals. No chemicals or other substances may be applied to parklands.
 4. Trash and Litter Removal. Partner shall pick up all trash and litter in the Park prior to each mowing or trimming and remove same from site. If in the course of mowing, litter or debris is shredded by mowers or trimmers, Partner shall immediately collect and properly dispose of it. Partner shall sweep, or otherwise clean, all dirt, grass clippings, fallen limbs, or other debris from sidewalks, walkways, and curbs.

5. Equipment. Partner shall only use rear, side or no discharge mower with adequate guarding to prevent propulsion of foreign objects. Mowers with either a side or rear discharge must be equipped with a grass deflector, which shall be deployed when mowing to prevent accidents from flying debris. The mowers must also include mulching decks to mulch grass clippings (to be left on grass) and to help avoid discharging projectiles during operation. Mowers and equipment are to be equipped with turf-type tires, and cleated tires are not permitted. Mowers shall be of an appropriate size for the area being mown. Blades should be sharp as to give a fine, clean cut. Equipment must be operated at a safe speed that allows for an optimal cut. All equipment shall be maintained in excellent operating and visual condition at all times. All OSHA-required safety devices shall be in place and in operating condition. Fuel cans shall be OSHA-approved safety cans. Trucks, tractors, mowers, trimmers, blowers and other equipment shall be free of oil and fuel leaks. Equipment malfunctions, excessive noise, unacceptable emissions, leaking, or spillage are not permitted.
6. Safety. Adequate flashing lights must be used on trucks and trailers, and warning devices (either a flashing light or an orange triangle) must be used on mowers. Safety vests or orange/red shirts must be worn at all times. Personnel shall wear eye and ear protection, as well as steel-toed boots. Any interruption of the normal flow of traffic must comply with the Manual for Uniform Traffic Control Devices. Partner shall post notices or signs in or near the Park during mowing operations. To protect the public safety, notices shall specify the type of service being performed, e.g., “mowing in progress.”
7. Mowing Times. Normal mowing services shall be performed between the hours of 8:00 a.m. and 8:00 p.m. Monday through Saturday. No work shall be permitted or allowed before or after hours or during City holidays without prior written approval of the City.

C. Workforce.

1. Partner shall employ competent workers, skilled in the performance of the services which they will perform under this Agreement.
2. Partner, its employees, Contractors, subcontractors, and Contractors’ and subcontractors’ employees shall not, while on City property or in the course and scope of delivering services under this Agreement:
 - a. Use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

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- b. Use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated or under the influence of alcohol or drugs on the job.

D. The Park shall be cared for at City Standards for Level 3 Urban Parks maintenance:

[See next page]

Level 3	Level Three is associated with locations that have low visitation and are affected by budget restrictions that cannot afford a high level of maintenance.
Turf Care	Grass will be mowed every 14-21 days.
	Weed control should be practiced so that no more than 25% of the surface has weeds present, at entrances only.
Irrigation	No irrigation.
Playgrounds, Water Features, Exercise Courses and Fountains	Staff inspects all playground equipment and areas on a weekly basis to ensure the equipment is in safe, clean, operating condition and the surfacing is free and clear of hazards.
	Staff trained by or passed the National Playground Safety Inspector (NPSI) Program will inspect the playground equipment and area two times per year (Low Frequency).
Restrooms and Pavilions	May involve contracted service for portable toilets (port-a-potty).
	Ensure weekly check to ensure contracted cleaning service is performed or staff will clean, sanitize and monitor once a week.
Litter Control / Surfaces	Parks and facilities are monitored a minimum of twice a week (M-S)
	Surfaces should be cleaned, repaired, repainted or replaced when appearance has noticeably deteriorated.
	Safety repairs take priority over appearance.
Tree and Plant Care	Tree Trimming: Trees evaluated annually.
Pest Management	Using an integrated pest control management program, sites will be inspected annually and may be treated with pre-emergent herbicides or mechanical methods to reduce weeds and invasive species.
	Usually done when disease or insects are inflicting noticeable damage, reducing vigor of plant materials or could be considered a direct bother to the public (i.e. fire ants).
	Some moderate problems may be tolerated at this level.
Area / Security Lights, Flag Poles, and Park Signage	All park site signage will be inspected bi-annually.
	Replacement or repair of fixtures when observed or reported as not working. Work order requests to Support Services should indicate a “2” priority.
Inspections / Repairs	Major components of a LEVEL Three facility should be inspected Monthly This includes: restrooms, playgrounds, ball fields, sports courts, parking lots, sidewalks, and landscaped areas.