

ZILKER PARK PARKLAND IMPROVEMENT AGREEMENT

Date: 8th February 2010

This Zilker Park Parkland Improvement Agreement (the "Agreement") is made and entered into by C3 PRESENTS, L.L.C., a Texas limited liability company (the "Promoter") and CITY OF AUSTIN, TEXAS, a municipal corporation organized and existing under the laws of the State of Texas (the "City").

WHEREAS, Promoter is the producer of an annual three-day music festival known as "Austin City Limits Music Festival" or "ACL Music Festival" (the "Music Event") which has been conducted in Zilker Park (the "Park"); and

WHEREAS, additional amenities and improvements to the Park that improve erosion and other impacts on the Park infrastructure will improve the public enjoyment of the Park; and

WHEREAS, Promoter desires to donate certain financial and other resources to improve the sprinkler system infrastructure of the Park for the public, to improve the deterioration and erosion in the Park, and to contribute additional amenities to the Park; and

NOW, THEREFORE, for and in consideration of the premises and mutual promises, and covenants, the Parties agree as follows:

I. TERM

The term of this Agreement is four (4) years (the "Term") from the Effective Date of this Agreement unless sooner terminated or the term is extended by amendment.

II. DESIGNATION OF CITY REPRESENTATIVE

The City designates the Director (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.

III. RESPONSIBILITIES OF PROMOTER

A. Promoter shall be responsible for reimbursing City for the construction and/or installation (as applicable) of certain improvements, including but not limited to all of the improvements listed in Exhibit "A" attached to this Agreement and incorporated by reference for all purposes, including the sprinkler and Drain Work (defined below) infrastructure improvements ("Project") within the area shown as "Park Improvement and Maintenance Area" on Exhibit

"B" attached to this Agreement and incorporated by reference (the **"Park Improvement and Maintenance Area"**). The Project will be placed and constructed according to plans, specifications, and construction documents (the **"Design Plan"**) approved by the Director prior to the start of construction.

B. Promoter shall have no right to place liens on the Park, and shall not cause any liens to be placed against the Park.

C. Promoter will not be responsible for or have any obligation to carryout any construction activity associated with the Project not otherwise provided for in this Agreement.

D. Promoter is responsible for reimbursing the City for the Project in accordance with Article V of this Agreement, provided, however, the maximum amount the Promoter must reimburse under this Agreement is \$3,000,000.00.

IV. RESPONSIBILITIES OF THE CITY

A. City agrees to coordinate all construction activity to minimize disruption of ongoing park activities, to not interfere with the Music Event and to ensure that construction meets City standards.

B. City will deliver to the Promoter written notice that each phase of the Project has been completed.

C. City is responsible for securing all permits and approvals necessary to construct the Project and ensure that construction meets City standards, including advance approval for all removal, cutting, and pruning of trees and coordinating all construction activity with designated PARD staff to minimize disruption of ongoing park activities.

D. City will inspect construction and exercise its rights or duties in order to protect persons, property or the public interest in the Park.

E. City will prepare a Project construction schedule and reasonably adhere to that schedule, 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 reasonable control of City or City's contractor.

F. City will cause its consultants and contractors coming onto the Park to work on the Project to carry general liability insurance covering any liability to third persons and costs of defense against such liabilities caused by their activities on the tract. The City shall cause a copy of a certificate showing the coverage in place as required by this paragraph, to be delivered to Promoter upon entry and periodically upon request by Promoter.

V. PROJECT COSTS AND RESPONSIBILITIES

A. Promoter shall be responsible for payment to the City an amount up to **TWO MILLION, FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,500,000.00)** for all costs of installation and construction of the sprinkler phase of the Project, including all 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, equipment costs, construction costs, and any other costs incurred in the design and construction of the Project (the "Reimbursement Amount").

B. Promoter will pay the Reimbursement Amount payable to the City under this Agreement as follows:

1. \$500,000.00 upon execution of this Agreement;
2. \$500,000.00 on or before 1 October 2010;
3. \$500,000.00 on or before 1 October 2011;
4. \$500,000.00 on or before 1 October 2012; and
5. \$500,000.00 on or before 1 October 2013.

C. In addition to the amounts owed under Section V.A. and V.B., Promoter will pay the City up to **FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00)** for Design Plans, engineering, construction and installation in the Park Improvement and Maintenance Area of area/French drains to outlets that drain to Barton Creek or Lady Bird Lake (the "Drainage Work"). Attached as **Exhibit "C"** is the proposed cost of the Drainage Work. Upon execution of this Agreement, Promoter will pay the City \$250,000.00 to apply to the Drainage Work. Upon completion of the Drainage Work, the City will provide a final invoice (including documentation of all costs) to the Promoter, and within 30 days of receipt of the invoice, the Promoter will pay the City up to an additional \$250,000.00 for the Drainage Work. If the total costs of the Drainage Work is less than \$500,000.00, then Promoter is responsible only for the costs of the Drainage Work, and Promoter may keep the difference between \$500,000.00 and the costs of the Drainage Work. Unless the parties agree otherwise in a separate executed agreement, the City is responsible for any costs of the Drainage Work that exceeds \$500,000.00.

D. If this Agreement is terminated early due to a breach by the Promoter, the Promoter's obligation to make payments for the Reimbursement Amount payable to the City and the costs of the Drainage Work actually performed before the effective date of the termination shall survive the expiration or termination of this Agreement.

VI. MAINTENANCE

City shall assume all responsibilities for maintenance of the Project, including payment: of the utility costs associated with such maintenance and regular mowing, regular watering, and annual pruning within the Park Improvement and Maintenance Area.

VII. TERMINATION, ENFORCEMENT AND AMENDMENT

A. If any party fails to properly fulfill its obligations under this Agreement in a timely manner, the non-breaching party shall notify the other party in writing of the specific violations of the Agreement. The breaching party shall have fifteen (15) calendar days from receipt of this notice (ten [10] calendar days for default in payment of the Reimbursement Amount) in which to cure any such violations. If the violations cannot be reasonably cured within

said fifteen (15) calendar day period (ten [10] calendar days for default in payment of the Reimbursement Amount) and the breaching party has diligently pursued such remedy as shall be reasonably necessary to cure violation, then the parties may agree in writing to an extension of the period in which the violation must be cured. In the event of a default in payment of the Reimbursement Amount, if it remains uncured following the allowable cure period, including any extensions, then City may initiate legal action or pursue such other measures as may be lawful, including (a) suing for specific performance, for the recovery of damages or for the release or return of all or part of the funds committed by City under this Agreement, or (b) cancel or refrain from issuing a permit for a future Music Event in the Park.

B. If the breaching party has not cured any such violation as specified in the written notice within the required time including all extensions thereof, then the non-breaching party, at its sole option, shall have the right to cancel or terminate the Agreement, in whole or part. Any cancellation or termination shall be made by sending written notice (the "Notice of Cancellation or Termination.") to the breaching party. The Notice of Cancellation or Termination shall be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.

C. The Agreement may be terminated at any time by a vote of the majority of the City Council of the City of Austin (the "City Council"). In the event of such a termination by the City Council, the City shall refund to Promoter all amounts paid by Promoter in relation to or in connection with the Project LESS any amounts expended by City for the Project; the City shall release and relinquish all claims to any and all bonds or letters of credit, if any, posted by Promoter in relation to or in connection with the Project, and Promoter shall be, as of the date of the termination by the City Council, relieved of all rights, responsibilities, and obligations hereunder.

D. Notwithstanding any other provision of this Agreement to the contrary and provided the costs of City's obligations under this Agreement as amended do not increase, this Agreement may be amended at any time as may be necessary or desirable by the affirmative joint decision of the Director (or his designee) and the Promoter or its successors and assigns. No such amendment may be deemed to be a termination of this Agreement. Further, if any portion of the Design Plan necessitates any discretionary approval, waiver, variance, modification, or adjustment from any City or other governmental board, agency, officer, director or employee or from any non-governmental board, agency, person, association, officer, director, or employee or necessitates termination or amendment of any restrictive covenant, condition, restriction, or agreement not within the unilateral control of Promoter or his successors and assigns, failure by Promoter or City to secure such approval, waiver, variance, modification, adjustment, termination, or amendment, shall not be deemed to be a default of this agreement or failure to perform hereunder.

VIII. MISCELLANEOUS PROVISIONS

A. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. 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 by the laws of the State of Texas and venue for any lawsuit concerning this Agreement shall lie 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.

D. 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, unless otherwise specified elsewhere in this Agreement:

If to the City, to:

Sara L. Hensley, Director
Parks and Recreation Department
City of Austin
200 South Lamar (78704)
P.O. Box 1088
Austin, Texas 78767

If to Promoter, to:

C3 Presents, L.L.C.
Attn. Charlie Jones
98 San Jacinto – Suite 400
Austin, Texas 78701

E. The Parties bind themselves and their successors in interest, assigns and legal representatives to this Agreement.

F. The Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument. Facsimile signatures appearing on the Agreement shall be as valid and binding as original signatures.

IX. SEVERABILITY

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

X. WAIVER

If at any time either Party or their successors or assigns, fail to enforce the Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of

the right to enforce it.

XI. NO RECOURSE

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

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THIS Agreement is effective the date first above stated.

WITNESS our hands at the City of Austin, Travis County, Texas.

Promoter:

C3 PRESENTS, L.L.C.

By: 

Name: Charlie Jones

Title: Manager

City:

CITY OF AUSTIN, TEXAS

By: 

Name: Marc A. Ott

Title: City Manager

APPROVED AS TO FORM:

By: 

Name: James M. Williams, Sr.

Title: Assistant City Attorney

Texas State Bar Number: 21549500

Attachments:

- Exhibit A – List of Parkland Improvements**
- Exhibit B - Parkland Improvement Area Layout**
- Exhibit C - Budget for Drainage Work**

10/1/2014

EXHIBIT A

1. The first part of the document is the title page.

2. The second part of the document is the introduction.

3. The third part of the document is the body.

4. The fourth part of the document is the conclusion.

5. The fifth part of the document is the references.

EXHIBIT A

6. The sixth part of the document is the appendix.

7. The seventh part of the document is the endnotes.

8. The eighth part of the document is the bibliography.

9. The ninth part of the document is the index.

Exhibit A

List of Parkland Improvements

Installation of a computer controlled irrigation system.

Replacement of turfgrass with an improved variety of bermudagrass (Tiffway)

Renovation of the volleyball courts.

Additional drinking fountains and a rinse shower.

Installation of area/french drains piped to outlets that drain to Barton Creek or Lady Bird Lake.

Installation of conduit for telecommunications.

Installation of bike racks.

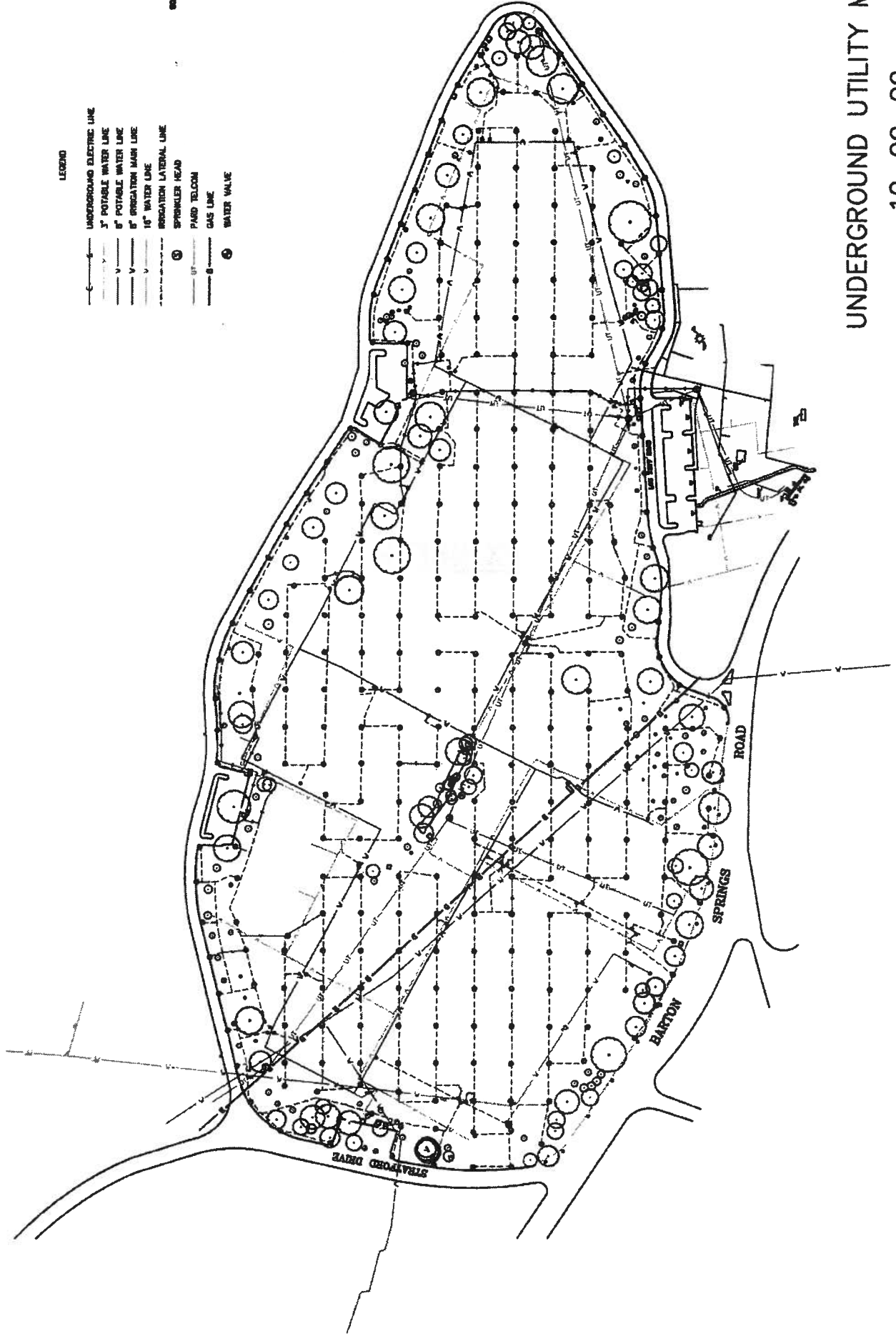
Installation of a tower for photo/video equipment.

Turfgrass maintenance equipment.

EXHIBIT B

LEGEND

- UNDERGROUND ELECTRIC LINE
- 3" POTABLE WATER LINE
- 6" POTABLE WATER LINE
- 8" IRRIGATION MAIN LINE
- 10" WATER LINE
- IRRIGATION LATERAL LINE
- ① SPRINKLER HEAD
- 12" PAVED TELLUM
- 8" GAS LINE
- ② WATER VALVE



UNDERGROUND UTILITY MAP

10-09-09

EXHIBIT C

EXHIBIT C

Item	Description	Value
1
2
3
4
5
6
7
8
9
10

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Zilker Drainage Work Budget

Equipment & Material	Budgeted Price
ADS Drainage Pipe, Fittings and Area Drains	\$12,400.00
Environmental Controls	\$4,800.00
Head Wall & Dissipater Pad	\$2,500.00
Project Management/Design	\$30,000.00
Labor	\$95,000.00
LOC Fencing	\$3,300.00
Materials Testing	\$500.00
Pea Gravel	\$14,500.00
Pre Plant Fertilizer	\$3,000.00
Road Cuts and Repair	\$10,000.00
Sand	\$7,000.00
Sandy Loam	\$31,000.00
Permitting	\$2,000.00
Sod	\$75,000.00
Equipment Purchase/Rental	\$25,000.00
Dumpster	\$2,000.00
Fleet/Fuel/Equipment Repairs	\$24,500.00
Hauling Spoils	\$5,000.00
Concrete Surface in Swale	\$15,500.00
Irrigation Repairs	\$15,000.00
Contingency	\$65,000.00
Total	\$443,000.00

Individual Area Breakdown Excluding Indirect Costs		
Area 1 Pond at West end of swell.		\$65,000.00
Area 2 Grade, Concrete, and Sod Swell.		\$58,500.00
Area 3 Raise and Sod Low areas.		\$111,000.00
Area 4 Repair drainage structure under BS Rd		\$15,000.00

Indirect Costs include Environmental Controls, LOC Fencing, Pre Plant Fertilizer, Permitting, Equipment Purchase/Rental, Dumpster, Fleet/Fuel/Equipment Repairs, Hauling Spoils, Irrigation Repairs, and Contingency.