

**AMENDMENT NO. 1
TO THE
PARKLAND IMPROVEMENT, MANAGEMENT, AND OPERATIONS AGREEMENT
BETWEEN
THE AUSTIN PARKS FOUNDATION
DOWNTOWN AUSTIN PARKS, LLC
AND
THE CITY OF AUSTIN FOR REPUBLIC SQUARE**

Dated: _____, 2020

This Amendment No. 1 to the Parkland Improvement, Management, and Operations Agreement Between the AUSTIN PARKS FOUNDATION, a Texas nonprofit corporation ("**APF**"), DOWNTOWN AUSTIN PARKS, LLC, a Texas nonprofit corporation ("**DAP**"), assigned on September 9, 2016, under the Assignment and Assumption of Parkland Improvement, Management, and Operations Agreement, and the CITY OF AUSTIN, TEXAS, a Texas home-rule city and municipal corporation (the "**City**" and together with APF and DAP, the "**Parties**") is made and entered into, executed, acknowledged, and approved by the Parties for the purposes and considerations stated below:

WHEREAS, the **Parties** desire to amend the Parkland Improvement, Management, and Operations Agreement Between **APF**, **DAP** and the **City** (the "**Original Agreement**") to clarify management and operational responsibilities;

WHEREAS, pursuant to Section XVII (Amendment in Writing) of the Original Agreement, the Parties now desire to amend the Original Agreement;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the Parties to this Amendment One, the City, APF, and DAP severally and collectively agree as follows, effective as of the Effective Date:

1. Parties agree to amend Section V, Paragraph C, 3, by: deleting Paragraph 3 and replacing it with the following language:

3. Annual Programming. Not later than 30 days prior to the reopening of Park following the completion of its construction, DAP shall provide to the Director in a form reasonably acceptable to the Director, for the Director's review and approval, an annual programming plan (the "**Annual Programming Plan**") for the operation of the Park for the fiscal year or remainder thereof ending on the next September 30. Thereafter, an Annual Programming Plan must be submitted to the Director at least 30 days prior to the beginning of each fiscal year. Prior to submission to the Director, each Annual Programming Plan must be approved by the DAP Board of Directors and by the Management

Committee. Each Annual Programming Plan shall establish the proposed budget, events, programs, activities, program rates, and all facility fees including rental fees, and shall include all proposed vendors and concessionaires, all full-time and part-time positions, all proposed subcontractors, and other operational requirements necessary to manage the Park. The Annual Program Plan shall contain a list of proposed events requiring full or partial closures of the Park that in any way limit access to the Park by the public. PARD approval of the Annual Programming Plan will be contingent upon City Manager approval of the list of events requiring full closure of the Park, up to 20 such events per year as noted in the proposed Annual Programming Plan. When the number of events proposed in the Annual Programming Plan requiring full closure of the Park is more than the 20-event limit, the City Manager must obtain additional approval by the City Council. Each Annual Programming plan shall include an "**Annual Programming Report**" providing information regarding DAP's programming for the previous year, including but not limited to events, activities, issues, and vendors' performance. Amendments to the Annual Programming Plan may be submitted during the year as may be necessary or desirable due to changed circumstances. The Director's approval of an Annual Programming Plan or amendment thereto shall not be unreasonably withheld, conditioned or delayed. However, the Director may not approve a proposed amendment to an approved Annual Programming Plan which increases the number of events in excess of the 20-event limit requiring full closure of the Park as previously approved by the City Manager for that particular year without further City Council approval. The Director may not disapprove a fee increase request for the upcoming year if the requested increase does not exceed the prior year's existing fee amount for the same activity by an amount equal to five percent (5%) of the prior year's existing fee amount. The Director may not disapprove a proposed vendor or concessionaire without good cause.

2. Parties agree to amend Section V (Management and Operational Responsibilities) by adding Paragraph G to read as follows:

G. DAP will provide the following baseline services to the maintenance and operation of the Park:

1. All landscaping services, including mowing of the grass, weeding, and power blowing on a regular schedule as established in each Annual Programming Plan.
 2. Trash removal and disposal on a regular schedule as established in each Annual Programming Plan.
3. Parties agree to amend Section VI (Responsibilities and Agreements by City) by: deleting Paragraph A and replacing it with the following language:

- A. As the design of the Park does not provide appropriate space for waste and recycling dumpsters, the City will provide DAP with access to waste and recycling dumpsters at an alternative mutually agreeable location. The costs to the City for access to these receptacles will be deducted from the annual payment for utility costs the City remits to DAP as described in Section VI, Paragraph C of this Agreement.
4. Parties agree to amend Section VI, Paragraph C, 3, to read as follows:

C. The City shall provide to DAP the following funding sources in connection with the maintenance and operation of the Park as provided by this Agreement:

3. The City will remit to DAP an annual payment for the utility costs and landscaping costs, as described in Section V, Paragraph G of this Agreement, to be incurred in connection with the maintenance and operation of the Park. The amount thereof shall be included in each Annual Programming Plan.

- (a) The annual payment for utilities shall be \$7000.
- (b) The annual payment for landscaping shall be \$7000.
- (c) DAP may request any adjustment to the utility payment or landscaping payment in its Annual Programming Plan. Upon DAP's utility payment or landscaping payment request in the Annual Programming Plan, PARD will seek approval through the City's Annual Budget process. Funding will be contingent upon Council approval.
- (d) The annual utility and landscaping payment shall be paid following the adoption of each annual City budget within 30 days after DAP submits a complete invoice pursuant to Section XVIII of this Agreement.

5. Parties agree to add a Section XVIII to read as follows:

XVIII. INVOICE PROCESS

- A. DAP shall submit an invoice to the City for utility and landscaping payment, pursuant to Section VI, Paragraph C, 3, of this Agreement on or before the 31st of January following the adoption of each annual City budget.
- B. Invoices must contain the following information:
 - a. A unique invoice number;
 - b. Date of invoice;
 - c. Contractor's name and address, which must exactly match the information in the Contractor's registration with the City;

- d. Date and description of services rendered;
- e. Name of the point of contact for the Department; and
- f. Applicable DO or PO number.

C. Invoices received without all the required information cannot be processed and will be returned to the Contractor. Invoices may be submitted by email to PADAccountsPayable@austintexas.gov or may be mailed to the address below:

City of Austin Park and Recreation Department
Financial Services Division – Accounts Payable
200 S. Lamar Blvd.
Austin, TX 78704

6. All other provisions of the Agreement shall remain in full force and effect.

EXECUTED by the authorized representatives of the Parties to be effective as of the Effective Date.

This Agreement is executed by:

APF: AUSTIN PARKS FOUNDATION

By: _____

Name: Colin Wallis,
Title: Executive Director

Date: _____

DAP: DOWNTOWN AUSTIN PARKS, LLC

By: _____

Name: Dewitt Peart,
Title: Chief Executive Officer

Date: _____

City: CITY OF AUSTIN, TEXAS

By: _____

Name: **Kimberly McNeeley**
Title: Director, Parks and Recreation Department

Date: _____

Approved as to form:

Assistant City Attorney