

EXHIBIT A

**DOWNTOWN DALLAS PRIORITY PARKS
DEVELOPMENT AND FUNDING AGREEMENT**

by and among

**CITY OF DALLAS,
a Texas municipal corporation**

PARK AND RECREATION BOARD,

**PACIFIC PLAZA LLC,
a Texas limited liability company,**

**HARWOOD PARK LLC,
a Texas limited liability company,**

**WEST END PLAZA PARK LLC,
a Texas limited liability company,**

**CARPENTER PARK LLC,
a Texas limited liability company,**

and

**PARKS FOR DOWNTOWN DALLAS,
a private operating foundation**

Dated May 23, 2018

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THE STATE OF TEXAS §
 COUNTY OF DALLAS §

THIS DOWNTOWN DALLAS PRIORITY PARKS DEVELOPMENT AND FUNDING AGREEMENT (the “Agreement”) is entered into as of May 23, 2018 (“Effective Date”) by and among the CITY OF DALLAS, a Texas municipal corporation (the “City”) acting by and through its PARK AND RECREATION BOARD (“Park Board”), and PACIFIC PLAZA LLC, a Texas limited liability company, (“Pacific Developer”); HARWOOD PARK LLC, a Texas limited liability company, (“Harwood Developer”); WEST END PLAZA PARK LLC, a Texas limited liability company (“West End Developer”); and CARPENTER PARK LLC, a Texas limited liability company (“Carpenter Developer”), (Pacific Developer, Harwood Developer, West End Developer, and Carpenter Developer collectively, “Developer” but individually as to the rights and obligations for the particular park for which each Developer is responsible pursuant to Section 4.1 hereof), and PARKS FOR DOWNTOWN DALLAS, a private operating foundation (“Foundation”). Developer and Foundation are collectively referred to herein as the “Foundation Entities.” The City, Pacific Developer, Harwood Developer, West End Developer, Carpenter Developer, and Foundation are sometimes referred to individually as “party” and collectively as “parties”

WHEREAS, in 2004, the City completed the Downtown Parks Master Plan and in 2013, the City updated the Master Plan (the “Update”) which included Pacific Plaza, Carpenter Park, Harwood Park and West End Plaza (individually “Pacific Plaza”, “Carpenter Park”, “Harwood Park”, and “West End Plaza” each individually sometimes referred to as “Park”, and collectively, the “Parks”) as the four priority sites for recreation and park-like amenities, and dedicated parks named in the Update; and

WHEREAS, the City owns the Carpenter Park site containing approximately 5.6 acres of land and improvements known as Carpenter Park, as generally depicted in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, West End Developer owns the West End Plaza site containing approximately 0.73 acres of land, as generally depicted in Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, Harwood Developer currently owns the land for the Harwood Park site, except the City of Dallas ROW, as generally depicted in Exhibit C attached hereto and incorporated herein by reference; and

WHEREAS, the City intends to close and vacate the Wood Street right of way, alley and adjacent sidewalks between Harwood Street and South Pearl Expressway to complete Harwood Park by incorporating the land comprising such public rights of way into Harwood Park; and

WHEREAS, Foundation, formerly known as The Belo Foundation, is a non-profit organization incorporated in the state of Texas and currently operating for the purpose of creating and promoting downtown Dallas parks; and

WHEREAS, Developer was formed and is wholly owned by Foundation for the purpose of assisting with the design and construction of the Parks; and

WHEREAS, Foundation, directly and/or through affiliated entities, has previously provided the City with management and other services related to the design and construction of other Dallas parks, including Belo Garden; and

WHEREAS, the parties desire to have exemplary downtown, multi-use recreation and park-like amenities, and dedicated parks owned by the City for use and enjoyment of the citizens of Dallas and others; and

WHEREAS, Pacific Developer previously managed the final design and will manage the development of construction of Pacific Plaza and has taken related actions as needed to facilitate the development of Pacific Plaza pursuant to that certain Pacific Plaza Development Agreement, and Operating Endowment Agreement between Pacific Developer, Foundation, and the City as authorized by City Resolution No.17-0494 dated April 14, 2017 (collectively "Pacific Agreements"); and

WHEREAS, Harwood Developer and West End Developer, respectively, desire to manage the final design and construction of the Harwood Park and West End Plaza and to take related actions for the development of those sites, and the City desires to authorize and does hereby authorize Harwood Developer and West End Developer and its invitees to have access to the Harwood Park and West End Plaza sites, respectively for such purposes; and

WHEREAS, Carpenter Developer, at its sole cost and expense, previously completed schematic design and design development documents for Carpenter Park, and gifted such design to the City and City accepted said design documents; and

WHEREAS, Carpenter Developer will be responsible for the final design construction documents for Carpenter Park; and

WHEREAS, the City intends to review and approve the design and construction phases of the improvements on the remaining three Parks, including creation of those Parks and related Park matters (herein referred to as "Improvements"), through the City Representative (as defined in Section 2.2 below); and

WHEREAS, the parties agree to follow the state and local procurement requirements when applicable, as described more fully in this Agreement; and

WHEREAS, this Agreement will set forth the terms and conditions for design and construction of Harwood Park, West End Plaza and Carpenter Park.

NOW, THEREFORE, the City, Developer, and Foundation in consideration of the mutual covenants, terms and conditions in this Agreement, and for other good and valuable consideration, do hereby agree as follows:

ARTICLE I SUBJECT OF AGREEMENT

Section 1.1 Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow: i) the Harwood Developer, West End Developer, and Carpenter Developer to manage the design and construction phases of the Improvements for Harwood Park, Carpenter Park and West End Plaza (collectively, the “Project”, and individually as to a particular Park); ii) Harwood Park, Carpenter Park, and West End Plaza to be created; and iii) for City (and/or Developer as the case may be) to undertake the procurement for construction of Harwood Park, West End Plaza and Carpenter Park and assign same construction contracts to Harwood Developer, West End Developer, and Carpenter Developer. Developer shall engage a design group for each Park design (individually and collectively referred to as the “Design Firm” to prepare, with public input, a schematic design for the Park which must be completed, and accepted and approved by the City’s Park and Recreation Department (“Park Department”) (individually and collectively referred to as the “Schematic Design”). The design of the Parks will be based substantially on the Schematic Design, with such changes or additions as the City Representative and Developer Representative may approve as reflected in the design development and construction documents to be approved by the City Representative. For purposes of this Agreement, any reference to the term “design” shall include design from the conceptual phase through construction documents. Moreover, the parties agree and acknowledge that Pacific Plaza does not fall under the purview of this Agreement, and Pacific Plaza is governed by the Pacific Agreements. References to Pacific Plaza in this Agreement are not intended to create or expand any obligations or rights of the parties outside of the Pacific Agreements.

Section 1.2 Commencement and Term. The “Term” of this Agreement shall commence on execution and shall terminate one (1) year after completion of the construction of the Improvements for the Project and issuance of the Final Acceptance Letter as provided in Section 6.21 of this Agreement with respect to the Project, unless terminated at an earlier date in accordance with the terms of this Agreement. The Term of the Agreement shall continue as it relates to any Park(s) for which a Final Acceptance Letter has not been issued as provided in Section 6.21.

Section 1.3 Uses. Developer shall manage the design and construction phases of the Improvements pursuant to the requirements described in Article VI of this Agreement, and will deliver the Parks to the City as provided in this Agreement. The City shall not charge a Project Management Fee or other related fee for the Project.

Section 1.4 Prohibited Uses. Developer shall not use or occupy the Parks, or permit the Parks to be used or occupied, (a) contrary to any statute, rule, order, ordinance, requirement, or regulation applicable thereto or (b) in any manner which would materially violate any permit. Without in any way limiting the foregoing, Developer shall not permit the Parks to be used in any manner that would render the required insurance thereon void or the insurance risk materially more hazardous.

ARTICLE II DEVELOPMENT AND PLANNING

Section 2.1 Joint Cooperation; Access. The parties agree to cooperate and coordinate with each other, and to assign appropriate, qualified personnel to this Project. Developer and its invitees shall have and the City does grant to Developer and its invitees reasonable access to the Parks to facilitate planning and performance of the intended purpose of this Agreement. With the consent of the City, Developer or the City shall cause consultants satisfactory to the City to conduct a Phase I Environmental Site Assessment with respect to each Park site and the City shall cause such consultants to conduct a Phase II limited site investigation if and as directed by the City (the “Environmental Reports”) that include soil and groundwater sampling regarding each Park site and the results shall be shared with the City with an opportunity for the City to comment and participate in the scope of such Environmental Reports. The Environmental Reports are being conducted for the purpose of ensuring that the Parks are protective of human health and environment. To the extent within its control, Developer shall provide for or cause the City to have reliance on such Environmental Reports in a written form acceptable to the City. The parties acknowledge that the Pacific Agreements provide for City funding of an amount not to exceed \$2 million dollars for the cost of any environmental clean-up program attributed to Pacific Plaza. The City by Resolution dated , 2018 subsequently has authorized the use of any remaining balance of the \$2 million dollars funding to be expended for the Phase II environmental reports and clean-up costs for Harwood Park, West End Plaza, and Carpenter Park.

Section 2.2 City’s Representative. The City designates the Director of the Park Department, or his or her designee, as its single representative, liaison, and point of contact for all purposes contemplated by this Agreement (the “City Representative”). The City Representative shall serve as a liaison for the Improvements on behalf of the City and Developer may rely upon any approval he or she provides with respect to the Project; without limiting the foregoing, the City Representative shall provide reasonable assistance, as appropriate, in obtaining and conveying relevant information regarding the Project to the appropriate municipal departments, committees, boards and the City Council and for promptly transmitting to Developer any comments from any of those bodies, as promptly as reasonably possible.

Section 2.3 Developer’s Representative. Developer designates its Manager Amy M. Meadows, or her designee, as its single representative, liaison and point of contact (the “Developer Representative”) and the City may rely upon any approval she provides; the Developer Representative shall have the same responsibilities for conveying information to Developer as the City Representative has regarding the City’s rights and obligations under this Agreement and for promptly transmitting to the City any comments from Developer, as promptly as reasonably possible. Unless otherwise designated, the Developer Representative shall also serve as Foundation Representative (the “Foundation Representative”) for purposes of this Agreement.

Section 2.4 Future Representatives. The City Representative, the Developer Representative and the Foundation Representative, or the entities they represent, may from time to time designate in writing other individuals authorized to act in their stead with respect to specified aspects of the Project and this Agreement.

ARTICLE III
CONDITION OF THE PARK SITES

Subject to the terms and conditions of this Article III and Section 5.3 of this Agreement, Developer accepts the Parks for Developer's use hereunder on an "AS IS, WHERE IS, WITH ALL FAULTS" condition and basis and subject to the existing contracts (if there are any), matters of record and zoning. Developer acknowledges and agrees that City has not made, does not make, and specifically negates and disclaims any representations, promises, covenants, agreements, guaranties or warranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, as to, concerning or with respect to (a) the value, nature, quality or condition of the Parks, including without limitation, the title, soil and utilities, (b) the income to be derived from the Parks, (c) the suitability of the Parks for any and all activities and uses which Developer may conduct thereon, (d) the compliance of improvements located at the Parks or their operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Parks, (f) the manner or quality of the construction or materials, if any, incorporated into the Parks, (g) the manner, quality, state of repair or lack of repair of the Parks, and (h) any other matter with respect to the Parks, and specifically, that City has not made, does not make and specifically disclaims any representations regarding compliance with any environmental protection, pollution, natural resource protection, archeological or land use laws, rules, regulations, orders or requirements, including the existence in or on the Parks of Hazardous Materials. Developer further acknowledges and agrees to accept the Parks for use and waive all objections against City arising from or related to the Parks or to any Hazardous Materials on it, provided that if prior to or during the Term, Developer or its contractors, subcontractors, consultants, agents or employees encounter Hazardous Materials that were released prior to the date of this Agreement on or affecting the site(s) for one or more of the Parks and that exceed applicable Texas Risk Reduction Program's ("TRRP") Tier I protective concentration limits for residential land use, the City will be responsible, at its cost, to enter such Park(s) into the Texas Commission on Environmental Quality ("TCEQ") Voluntary Cleanup Program ("VCP"), Health and Safety Code, Subchapter S, to secure a Municipal Setting Designation and a Certificate of Completion for such Park(s). Developer further acknowledges and agrees that any information provided or to be provided with respect to the Parks was obtained from a variety of sources and that City has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. City is not liable for or bound in any manner by any verbal or written statements, representations or information pertaining to the Parks, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The term "Hazardous Materials" as used in this Agreement shall mean any hazardous materials or hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601 *et seq.*, hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* and at the Texas Solid Waste Disposal Act, Health and Safety Code § 361.003(12).

ARTICLE IV
FUNDING OF THE PROJECT; ENDOWMENTS; NAMING OPPORTUNITIES

Section 4.1 Funding.

- (a) **Funding.** City and Developer (with funds provided by Foundation or others) agree to bear all costs related to Park acquisition and the design, procurement, and construction phases of the Improvements in accordance with the provisions of this Agreement.
- (b) **Funding Allocation.** Inclusive of the Foundation's funding obligations under the Pacific Agreements, Foundation shall provide a total of \$45.1 million in cash, prepaid expenses and property for the Project, Pacific Plaza and the Pacific Plaza Operating Endowment referenced in Section 4.3. As of April 2018, the Foundation represents and warrants that Foundation has funded a total of approximately \$23,830,000 in cash and prepaid expenses toward the Project, the Pacific Agreements, and property acquisitions for Harwood Park and West End Plaza.
- (c) **City Allocation.** City shall provide a total of approximately \$39.4 million in cash from the 2006 and 2017 Bond Programs for the Project, less City's percentage allocation for administration fees. The City's allocation shall under no circumstances be directed toward operating costs or any endowments related to the Project. The City's percentage assessment for public art on the 2017 bond funds allocated for the Project has been waived by City Council pursuant to Resolution No. _____, dated _____ due to the expenditures to date by Foundation for the artwork for Carpenter Park. These expenditures satisfy the City's percentage assessment and shall be accepted in lieu of any City's percentage requirement for the Public Art component of the Project under the Dallas City Code.

The parties agree that each of their allocation, as remaining as of the date of this Agreement, is collectively available for the Project. Accordingly, therefore, by mutual cooperation and agreement of the parties, subject to City Representative's approval, the funding for Project Improvements may be shifted from one Park to another. The parties further agree that any allocated funds not expended for design and construction of the Improvements or any related Project costs may be, but are not required to be, used to create one or more endowments benefitting one or more of the Parks as contemplated by Section 4.3 hereof.

- (d) **Pacific Plaza.** The City owns the site for Pacific Plaza, including the Live Oak right of way and sidewalks being closed and vacated and incorporated into the Park site. Pursuant to the Pacific Agreements, Pacific Developer shall utilize Foundation funds for the design and construction of the Improvements for Pacific Plaza in accordance with the Pacific Agreements. Thereunder, with the City's consent and approval, Pacific Developer engaged SWA Landscape Architects as the Design Firm for Pacific Plaza. Pacific Developer, as of the date of this Agreement is

undertaking the construction and development of Pacific Plaza in accordance with the Pacific Agreements.

- (e) **West End Plaza.** As of the Effective Date, West End Developer is the owner of West End Plaza as described in Exhibit B attached to this Agreement. It is the intent of the parties to consummate a land sale from West End Developer to the City in accordance with applicable law. To the extent West End Developer maintains any third-party lease(s) on the West End Plaza, West End Developer shall assign said lease(s) to City as part of closing the sale transaction. The City and West End Developer agree not to engage a broker for the land sale and shall not charge any brokerage commissions therein. All sale costs, except for the purchase price, shall be the responsibility of West End Developer, including but not limited to cost of title insurance and sale closing which shall be included as part of the Foundation's funding allocation. On or before August 8, 2018, the City shall obtain fee simple title to West End Plaza from West End Developer, inclusive of assignment of any third-party lease(s) as set forth hereinabove. The parties estimate the purchase price shall be no greater than \$8,600,000.00, which is West End Developer's acquisition cost. Any revenue generated by the City from parking at West End Plaza shall be used to fund Improvements to West End Plaza. West End Developer agrees that it will fund the West End Plaza Improvements by utilizing the purchase price proceeds and City parking revenues to fund such Improvements to West End Plaza, and use any excess proceeds for the benefit of another Park or Parks Improvements and/or for one or more endowments as determined by City and Developer. With the City's consent and approval, West End Developer has engaged James Corner Field Operations as the Design Firm to prepare the Schematic Design and the plans for the Improvements for West End Plaza. West End Developer shall utilize Foundation and other funds for the design and construction of the Improvements for West End Plaza in accordance with the design to be prepared for West End Plaza. Development of West End Plaza shall be in accordance with this Agreement.
- (f) **Harwood Park.** As of the Effective Date, Harwood Developer is the owner of Harwood Park as described in Exhibit C attached to this Agreement. It is the intent of the parties to consummate a land sale from Harwood Developer to the City in accordance with applicable law. To the extent Harwood Developer maintains any third-party lease(s) on Harwood Park, Harwood Developer shall assign said lease(s) to City as part of closing the sale transaction. The City and Harwood Developer agree not to engage a broker for the land sale and shall not charge any brokerage commissions therein. All related sale costs, except the purchase price, shall be the responsibility of Harwood Developer, including but not limited to cost of title insurance and sale closing which shall be included as part of the Foundation's funding allocation. On or before six (6) months from the date of the earliest appraisal, the City shall obtain fee simple title to Harwood Park from Harwood Developer, inclusive of assignment of any third-party lease(s) as set forth hereinabove. The parties estimate the purchase price shall be no greater than \$11,787,216.00, which is Harwood Developer's acquisition cost. Any revenue generated by the City from building rentals or parking at Harwood Park shall be

used to fund Improvements to Harwood Park. Harwood Developer agrees that it will fund the Harwood Park Improvements by utilizing the purchase price proceeds, City building rentals or parking revenues and 2017 bond funds to the extent necessary to fund such Improvements to Harwood Park, and use any excess proceeds for the benefit of another Park or Parks Improvements and/or for one or more endowments as determined by City and Developer. With the City's consent and approval, Harwood Developer has engaged Ten Eyck Landscape Design as the Design Firm to prepare the Schematic Design through construction documents for the Improvements for Harwood Park. Harwood Developer shall utilize Foundation and other funds for the design and construction of the Improvements for Harwood Park in accordance with the Schematic Design through construction documents to be prepared for Harwood Park. Development of Harwood Park shall be in accordance with this Agreement.

- (g) **Carpenter Park.** The City owns Carpenter Park. Developer funded the design of the Improvements in accordance with the Schematic Design to be prepared for Carpenter Park. Carpenter Developer has engaged Hargreaves Associates as the Design Firm for Carpenter Park to prepare the Schematic Design and design development documents for the Improvements for Carpenter Park. The City agrees that it shall be responsible to fund a portion of the construction of the Improvements for Carpenter Park. Development of Carpenter Park shall be in accordance with this Agreement.
- (h) **Capital Account.** To assist the City to comply with all applicable law regarding the expenditure of bond funds, including but not limited to certifying the private match funding for the Project under that certain bond ordinance 30554 has been received, the Foundation Entities agree to maintain the Foundation Entities' remaining portion of funding required under this Agreement in one or more designated capital accounts, accessible to the City and its auditors for review.

Section 4.2 Additional Funds. The shared goal and intention of the parties is to complete the Project and the funding obligations under the Pacific Agreements, for a total cost of approximately \$83.5 million, hereinafter referred to as "Downtown Parks Budget." The parties intend that the Downtown Parks Budget is sufficient to fund the Project and the funding obligations under the Pacific Agreements in a manner acceptable to the parties and they will work together to maintain Project and Pacific Plaza scope of work and costs within the Downtown Parks Budget and not unreasonably exercise or delay oversight and approval rights under this Agreement so as to exceed the Downtown Parks Budget. Without their respective individual express written consent, Developer and City shall have no obligation to bear any costs of the Project and the funding obligations under the Pacific Agreements in excess of their individual allocation in accordance with the terms of this Agreement. Nothing contained in this Section 4.2 prevents the City and Developer from mutually agreeing to increase the total cost of designing and constructing the Improvements by any additional amount that they, or any other person, commit to contribute for that purpose, provided that neither the City nor Developer nor the Foundation is under any obligation to make any additional contribution. Notwithstanding the foregoing, if the total cost of the Project and the funding obligations under the Pacific Agreements exceeds \$83.5 million in the course of design and construction contemplated herein, the parties shall negotiate a mutually

acceptable scope of work to either (i) complete the Project and Pacific Plaza within the \$83.5 million budget or; (ii) modify the Approved Plans.

Section 4.3 Endowments. Foundation, the City through its City Representative and Developer may, but they are not obligated to, enter into one or more endowment agreements, whereby Foundation may create and administer one or more endowments for the benefit of one or more of the Parks following completion. The parties acknowledge that the Foundation, the Pacific Developer and the City have entered into an Operating Endowment Agreement (herein so called) dated as of April 14, 2017 and approved by the City Council on March 22, 2017, and Foundation has fully funded the endowment, distributions from which are to be applied toward operating and maintaining Pacific Plaza (the "Pacific Plaza Operating Endowment").

Section 4.4 Naming Opportunities.

- (a) In light of the Foundation Entities' contributions regarding the Project, the City hereby agrees that the Foundation shall have the right to name the Parks, subject to approval by the Park Board. If a donor satisfactory to the City and Foundation contributes a minimum of \$10 million in cash and/or marketable securities for Pacific Plaza, Harwood Park or Carpenter Park, individually, or \$5 million in cash and/or marketable securities for West End Plaza, to Foundation towards the total costs of a Park, Foundation agrees to waive its right under this paragraph to name such Park as requested by such donor and approved by the Park Board. In addition, this Agreement shall control over any future Park Board naming policy adopted by the Park Board.
- (b) The City, acting through the City Representative, and Foundation shall have the right to jointly approve donor-naming opportunities. The designation of donor-naming opportunities pursuant to this Agreement is not a commitment or requirement that any such opportunities shall in fact be realized or funded before or after completion of the Project.
- (c) Foundation is authorized to solicit contributions from donors as contemplated by this Section 4.4 or otherwise. Contributions from donors received by Foundation for those purposes may be applied by the Foundation Entities toward the costs of the Project and/or to establish one or more endowments to support the Project and/or Parks in future years. Any such endowments may be established either for the purpose of long-term capital improvements and maintenance or for operations and maintenance for the Project and/or Parks. If Foundation receives funds from donors in an amount sufficient to allow Foundation to reduce its contributions towards the costs of the Project, Foundation agrees to apply the amount of such reduction (a) to establish or increase one or more endowments supporting the Project and/or Park and/or (b) towards the costs related to the design, procurement and/or construction phases of one or more of the other downtown Dallas parks identified in the Downtown Parks Master Plan Update and/or to establish one or more endowments to support any such parks in future years. To the extent the amount of the reduction is not fully utilized pursuant to clauses (a) and/or (b),

Foundation may apply the remaining amount towards costs it or its affiliates incur in support of existing downtown Dallas parks.

- (d) Without limiting any of the foregoing, the parties agree that any application of contributions received under this Section 4.4, if applied toward the costs of the Project, shall not be credited toward either the City's or the Foundation's development funding obligations required under this Article IV.

ARTICLE V ACQUISITION AND DELIVERY OF PARKS BY THE CITY

Section 5.1 Status of Parks. The City shall own title to all of the Parks. The City agrees that it will provide access to each of the Park sites to Developer as a "building site", subject to the provisions of this Article V, which will thereafter permit construction of the Improvements to commence within 270 days after the latest to occur of: (i) final construction plans for a Park are approved by the City Representative; (ii) a plat of the Park in accordance with the final design of the Park shall have been prepared by Developer and approved [on a preliminary basis] by all requisite City action; (iii) the plat and plans of the Park shall reflect, after proper approvals are obtained, the Schematic Design of the Park; (iv) agreements satisfactory to the City and Developer shall have been reached regarding the relocation and/or abandonment of utilities under or affecting the Park; (v) any response action undertaken by the City and its contractors pursuant to the TCEQ VCP; (vi) receipt of all required City approvals to close and vacate any street(s) contemplated by the Approved Plans for such Park, effect any necessary changes to traffic signalization relating to such Park and qualify for an early building permit release; and (vii) arrangements satisfactory to the City and Developer shall have been made to address any agreements, easements, mineral rights or other rights that are necessary to be addressed to permit the construction of the Park as planned and/or anticipated operations of the Park after completion. The City and Developer agree to use all reasonable efforts, in cooperation with one another, to satisfy as promptly as practicable the conditions set forth in clauses(i) through (vii) above to permit construction to commence with respect to all of the Parks within twenty-four (24) months after the Effective Date of this Agreement.

Section 5.2 The City's Obligations Regarding the Parks. If the City fails to perform its obligations under Sections 5.1, 5.3 (except as a result of the City's exercise of its termination rights pursuant to the last sentence thereof), or 5.4, then the Foundation Entities, at their sole option, may terminate this Agreement and the Operating Endowment Agreement (without owing any damages or being subject to any obligations to the City).

Section 5.3 Environmental Reports; Remediation of Parks. Developer shall share with the City any environmental information and data it generates, collects, or otherwise obtains that relates to the Parks or Environmental Reports. Developer shall cause its consultants to identify City as a party entitled to rely on any environmental report and allow City the right to review, comment, and grant approval for any environmental report prior to finalization. No environmental report shall be finalized without review and approval by the City Representative. Developer has provided Environmental Reports for West End Plaza and Harwood Park that are satisfactory to the City. If, as described by Article III, hazardous wastes exceed applicable Texas Risk Reduction Program's ("TRRP") Tier 1 protective concentration limits for residential land use, the City shall

address the environmental condition as set forth in this Agreement and as appropriate under applicable law. The City, with such assistance from Developer as Developer deems appropriate and advisable, shall comply with and fund all applicable requirements of the TCEQ VCP or another appropriate regulatory cleanup program until it secures a regulatory closure if necessary, for Pacific Plaza, Carpenter Park, and Harwood Park, if applicable. If remediation costs for Pacific Plaza as referenced in the Pacific Agreements, is under \$2 million, then the remaining amount may be used for any environmental remediation costs for West End Plaza, Harwood Park, or Carpenter Park, as needed. If the projected costs of obtaining regulatory closure under the TCEQ VCP or another appropriate regulatory cleanup program exceeds \$2 million for Pacific Plaza, West End Plaza, Harwood Park, and Carpenter Park, the City, not later than ninety (90) days following receipt of the final cost estimate for the voluntary cleanup, may terminate this Agreement and any related endowment agreement (without owing any damages or being subject to any obligations to Developer) unless additional funding can be identified and used to pay for the voluntary cleanup costs.

Section 5.4 Dedication of Parks. To the extent allowed by law, on or about the issuance of the Final Acceptance Letter applicable to each Park, the City shall take all required actions to dedicate such Park and its use as a public park under applicable law for the citizens of Dallas.

ARTICLE VI DESIGN AND CONSTRUCTION

Section 6.1 Design and Construction of the Project

- (a) Harwood Park; Carpenter Park; West End Plaza. With respect to Carpenter Park, West End Plaza and Harwood Park, nothing in this Article VI prohibits the City from contributing the City allocation funds, if available, and in accordance with the terms of this Agreement, in reimbursing the Developer for the Developer's share of public improvement costs as long as the amount does not exceed thirty (30%) percent of the total public improvement costs, in accordance with state law developer participation requirements.
- (b) Carpenter Park. Carpenter Developer engaged Hargreaves Associates, at its sole cost and expense, as the Design Firm to complete Schematic Design services for Carpenter Park. The Schematic Design was completed and Carpenter Developer gifted said design to the City. City will undertake a portion of the construction for Carpenter Park, and for those City components that are to be publicly bid and funded (City funded Carpenter Improvements), City shall award the construction contract to the best value proposer and assign same to Carpenter Developer for all purposes including inspection, supervision, quality control, utility coordination, obtaining utility clearances from all utility companies, staging and coordinating all utility-related work with the construction contractor, general coordination, and completion of all construction work. Carpenter Developer shall then enter into a separate agreement with its construction manager pursuant to which Carpenter Developer's construction manager shall act as construction manager for Carpenter Developer with respect to the construction contract for the City funded Carpenter

Improvements. In accordance with Section 4.1(g), City will arrange and provide necessary funds for award of the construction contract for the City funded Carpenter Improvements, not to exceed City's limit as agreed to between City and Developer. In addition, City shall be solely responsible for all costs and expenses of the construction manager recommended by Carpenter Developer in connection with the City funded Carpenter Improvements. For the City funded Carpenter Improvements, Carpenter Developer shall review and certify as correct, following the Carpenter Developer's architect or engineer's review and approval, all monthly and final payment requests and forward same to the Director for review and subsequent processing through City's Park and Recreation Department with such supporting documentation as the Director may reasonably require. All payments for work performed under the construction contract for the City funded Carpenter Improvements shall be made by City to the construction contractor from the funds appropriated for that purpose. City shall not make any payments under a monthly or final estimate unless Carpenter Developer has certified, by affidavit sworn to or by corporate official or employee duly authorized to submit same, that the estimate of work completed for the period in question is true and correct to the best of his information and belief, has been measured and verified in accordance with contract documents, and that all contract preconditions to payment have been met. For the City funded Carpenter Improvements, final payment to the construction contractor shall not be made until all preconditions to final payment set forth in the construction contract have been performed, and all construction to Carpenter Park has been finally completed (as verified by Carpenter Developer, and the engineer, and Director) in accordance with the Approved Plans, and acceptance by the Director.

- (c) Except as provided in this Agreement, Developer shall utilize the funding described in Article IV to undertake and complete the design and construction of the Improvements for Harwood Park, Carpenter Park and West End Plaza subject to the terms of this Agreement. In this regard, Developer hereby agrees to enter into (in its own name) and perform all contracts necessary to fully complete construction of the Improvements to the Parks based substantially on the Schematic Design, and as amended, and the final construction plans and specifications, as approved by the City Representative. All of Developer's contracts, including the assignment of any construction contracts from the City as set forth in this Article, relating to the design and construction of the Improvements to the Parks shall: (i) require the construction manager and contractor(s) to use good faith efforts to comply with the City's (BID) Business Inclusion and Development Plan as provided in Section 6.12; (ii) contain language subjecting such contract to the terms of this Agreement and exculpating the City from any obligations and liability thereunder; (iii) comply with the insurance requirements as shown on the attached Exhibit E, naming the City and its officers and employees as additional insureds (the "Insurance"); (iv) contain payment and performance bond provisions set forth in Section 6.6 hereof and showing the City and Developer as joint obligees on all payment and performance bonds; (v) explicitly disclaim any lien or similar rights held by the applicable contractor or firm with respect to the Parks; (vi) release, defend, indemnify and hold harmless the City, its officers, agents and employees

from and against all claims, lawsuits, judgments, costs, expenses and damages resulting from the negligent or strictly liable act or omission of the applicable contractor or firm, its agents, employees, or subcontractors, except to the extent resulting from the negligence or fault of the City, its officers, agents, employees, or separate contractors, with any joint or concurrent responsibility of the contractor or firm and the City being apportioned in accordance with law, but without waiving any governmental immunity available to the City and without waiving any defenses of the parties under applicable law; (vii) obligate the applicable contractor or firm to take all necessary actions to ensure that, in connection with any work under the contracts, they and their agents, employees and subcontractors will not discriminate in the treatment or employment of any individual or group of individuals on the grounds of race, color, religion, ancestry, natural origin, place of birth, age, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance, either directly, indirectly or through contractual arrangements; (viii) obligate the applicable contractor or firm to keep, retain and safeguard all records relating to the contract or work performed thereunder for a minimum period of three (3) years from the final completion of the contract, with full reasonable access allowed to the City Representative, upon reasonable written request, for purposes of evaluating compliance with this Agreement; (ix) except as explicitly provided herein and subject to the City's general approval rights described herein, Developer may contract for services and deliverables under this Agreement for the Project on commercially reasonable terms and, except as specifically provided in this Agreement, shall not be required to comply with the City's procurement policies and procedures applicable to its own public works contracts; (x) if applicable, contain contractor qualification requirements sufficiently broad so as not to exclude minority contractors as a class, and general contract specifications sufficiently broad so as not to favor a single contractor; and, (xi) obligate the applicable contractor to comply with all other applicable terms of this Agreement. The City shall have no liability for any claims that may arise out of design or construction of the Improvements to the Parks by Developer's consultants and contractors, and Developer shall cause all of its contractors, construction manager, consultants, and subcontractors to agree in writing that they will look solely to Developer, not to the City, for payment of all costs and valid claims associated with the design and construction of the Improvements to the Parks. Furthermore, the City Representative has a right to review and approve the selection of any contractors used by Developer on the Project, which approval shall not be unreasonably withheld.

Section 6.2 Design Professionals and Construction Contractors/Construction Manager(s).

- (a) Each Design Firm, as mentioned in this Agreement, was previously selected to prepare the design for each Park and the City hereby approves the continuation of the Design Firm to prepare the final design and construction plans and specifications of the Improvements (the "Plans") for the Project, which shall be subject to the City's review and approval, and which shall not be unreasonably

withheld. Developer shall be responsible for contracting with, managing and compensating the Design Firm at no extra cost to the City; and

- (b) Developer will, subject to the City's review and approval which shall not be unreasonably withheld, select, retain and compensate one or more contractors to construct the Improvements in accordance with the Plans approved by the City Representative (the "Approved Plans"). The City hereby approves of Developer's retention of The Beck Group or an affiliate thereof (the "construction manager") to serve as construction manager for the Project. Notwithstanding the foregoing sentence, Carpenter Developer acknowledges and agrees that City will procure, in accordance with all applicable law, and award the contract for the City funded Improvements for Carpenter Park and assign same to Carpenter Developer in accordance with this Article. If required by applicable law, Harwood Developer and West End Developer acknowledge and agree that City will procure and award the contract for the City funded Improvements for Harwood Park and West End Plaza, in accordance with all applicable law; and City shall subsequently assign same to Harwood Developer and West End Developer in accordance with this Article.
- (c) Upon mutual agreement which shall not be withheld, City Representative and Developer Representative shall have the right to replace any Design Firm, construction manager or contractor.

Section 6.3 Review of Plans.

- (a) All Plans for the construction of the Improvements made to the Parks must be reviewed and approved in writing by the City Representative, prior to commencement of any work, subject to Section 6.13 below. At the completion of the Schematic design phase, the Developer shall submit to the City for review and approval design development documents at 50% and 100% completion. Developer shall also submit to the City for review and approval construction documents phases at 50%, 90%, and 100% completion. In particular, Developer shall provide to the City Representative for review and approval 2 full size, 3 reduced size, for a total of 5 sets of the Plans for each review of the Plans pertaining to the Parks. All proposed design and construction documents shall conform to applicable City codes, ordinances, regulations, design criteria, building standards and specifications. The construction general conditions utilized by Developer and its contractors to govern construction of the Parks shall be at a minimum substantially equivalent to the City of Dallas construction standards. For purposes of this Agreement, City of Dallas construction standards is defined as Public Works Construction Standards-North Central Texas, as published by the North Central Texas Council of Governments, October 2004, as amended, the most current City of Dallas Addendum to the Public Works Construction Standards, and other such specifications required by the City (hereinafter referred to as "City of Dallas Construction Standards"). All material revisions to the Approved Plans shall be submitted to the City Representative for prior written approval subject to and in accordance with Section 6.13 below;

- (b) The City Representative shall approve all Plans or, alternatively, provide a clear explanation of its reasons for withholding approval, within a reasonable time after its receipt of a request for approval from Developer, which time shall not exceed thirty (30) days, unless a longer period is necessary because the Park Board or the City Council calendar, as applicable, does not provide for an earlier meeting. If the City Representative fails to disapprove a request or to inform Developer in writing of the need for additional time within the 30-day period, the City shall be deemed to have approved the Plans as submitted pursuant to this Section; and
- (c) The City Representative's review of any Plans is solely for the City's own purposes, and the City does not make any representation or warranty concerning the appropriateness of any such Plans for any purpose. The City Representative's approval of (or failure to disapprove) any such Plans shall not render the City liable for same, and Developer assumes and shall be responsible for any and all claims arising out of or from the use of such Plans.

Section 6.4 Construction Documents Provided to the City Representative.

- (a) Developer shall provide two (2) full-size sets and three (3) reduced-size sets of construction documents to the City Representative, including an electronic version of the documents, for approval before the date of distribution of the documents to potential contractors and subcontractors prior to commencement of construction of the Improvements covered thereby, signed and sealed by one or more registered professional architects, landscape architects or engineers licensed in the State of Texas. Developer shall provide the City Representative with a set of approved record set of reproducible drawings, including an electronic version of the documents, after completion of construction of the Improvements, signed and sealed by one or more registered professional architects, landscape architects or engineers licensed in the State of Texas, and approved by Developer's contractor or construction manager. Any material changes to the Approved Plans shall require prior written approval of the City Representative in accordance with Section 6.13 below; and
- (b) The Approved Plans prepared for the Improvements are for use solely with respect to the Project and Developer shall transfer ownership of the documents to the City following issuance of the Final Acceptance Letter. Developer shall be permitted to retain copies, including reproducible copies, of the drawings and specifications and to utilize them, but only in accordance with, and for the purposes of carrying out, the terms of this Agreement and any related agreements.

Section 6.5 Permits and Other Approvals. Developer shall acquire, as required by applicable laws, ordinances, or regulations (but relying on the City's assurance in Section 5.1) and at no cost and expense, all building permits, certificates of occupancy, and other permits, including, if applicable, notices of intent under storm water regulations promulgated pursuant to the Federal Clean Water Act, licenses, permissions, consents, and approvals required to be obtained from government agencies or third parties in connection with construction, occupancy and uses of any improvements to the Parks. Developer shall furnish the City evidence thereof. Furthermore,

Developer shall not direct the contractors to commence work until the City Representative has issued a written notice to Developer to proceed, such issuance not to be unreasonably withheld. As to matters outside the scope of the City's standard permitting procedures, except with respect to the City's approval of the Approved Plans, for which it may withhold approval for any reason, the City will not unreasonably withhold or delay its approval of any matter regarding the design or construction of the Improvements; the City shall approve or, alternatively, provide a clear explanation of its reasons for withholding approval, within a reasonable time after its receipt of a request for approval from Developer pursuant to this Section 6.5 (which shall not exceed thirty (30) days unless a longer period is necessary because of the Park Board's or the City Council's calendar, as applicable).

Section 6.6 City Required Bonds and Insurance During Construction. For the construction contracts described in this Article (except for any contracts where the total expenditure will be \$50,000 or less), Developer shall require its construction contractor to furnish performance and payment bonds issued in accordance with Chapter 2253, Texas Government Code, as amended, by a corporate surety or sureties licensed to issue surety bonds in Texas, authorized to do insurance business in Texas, listed on the United States Treasury List of Sureties Authorized to Issue Bonds for Federal Jobs, and otherwise acceptable to the City. The bonds shall be issued on forms reasonably approved by the City, and shall name Developer and the City as joint obligees. The bonds shall be maintained during the full term of the construction contract. Developer shall require the construction contractor to secure a replacement surety in the same manner as required above in the event the original surety becomes insolvent. If Developer procures construction of the Improvements in packages, and an individual construction package has a total expenditure of \$50,000 or less, no bonds will be required; Developer agrees, however, that prior to final completion of work included in the construction documents it will not pay a construction contractor for work on an un-bonded construction package for which \$50,000 or less is to be spent until final completion of such construction package and receipt of releases or waivers of liens for the un-bonded construction from the construction contractor and any subcontractors used on such construction package. In addition, Developer agrees to require its construction contractor on any improvement project under this Section to provide, at a minimum, the Insurance. Developer will not permit any claim or lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Parks in connection with any construction, improvements, maintenance or repair thereof made by Developer or any contractor, agent or representative of Developer. Developer shall cause any such claim or lien to be fully discharged, bonded, or otherwise addressed to the City's reasonable satisfaction no later than forty-five (45) days after the date of filing thereof.

Section 6.7 Conditions to Commencing Construction. Developer individually or respectively acknowledges and agrees that, before commencing construction, the following conditions must be met in the manner otherwise set forth in this Agreement:

- (a) approval of all Plans for the construction of the Improvements made to the Park by the City Representative;
- (b) obtaining all building permits, zoning, platting, certificate of appropriateness, and other approvals required for the construction;

- (c) providing the City Representative with proof of sufficient financial resources to insure that upon commencement of the construction, the work shall be completed in accordance with the Approved Plans within the time allotted; this obligation shall be fully satisfied by the Foundation Entities certifying to the City that they have adequate cash and securities to complete the Improvements in accordance with Section 4.1 after giving full effect to the property sales and purchases contemplated thereby;
- (d) providing the City Representative with copies of all construction contracts, including addenda and change orders;
- (e) providing certificates, policies or other proof of the required insurance;
- (f) preparing compliant storm water pollution prevention plans that achieve City standards for such plans in constructing improvements to a comparable City facility, and any other applicable environmental requirements as set forth in this Agreement;
- (g) cooperating with the City Representative to conduct any necessary environmental site assessments, response actions, or activities pursuant to TCEQ VCP or another appropriate regulatory cleanup program;
- (h) providing conditional lien waivers from all general contractors and sub-contractors; and
- (i) entering into an assignment agreement with the City's best value proposer for the City funded Improvements for Carpenter Park, Harwood Park and West End Plaza, as applicable, as set forth in this Article.

Section 6.8 Project Construction. Subject to all applicable laws and regulations and in accordance with the Approved Plans for the Project, Developer shall be responsible for all material, labor, facilities, furniture, fixtures and equipment, signage, landscaping, and any other activities necessary to begin and fully complete the work in accordance with the Approved Plans in all material respects. All work shall be performed in a good and workmanlike manner. Developer shall be responsible for acquiring any new utility service or increased capacity of existing utility services that it may need for the construction of the Improvements, provided that the City shall fully cooperate with Developer in that effort.

Section 6.9 City Right to Observe and Inspect. The City shall have the right (but not the obligation) to observe and inspect work performed by any contractor(s) or subcontractors performing work on the Parks. The City inspection of the job site shall be coordinated with the Developer's Representative and performed in an expeditious manner calculated to prevent any unsafe or hazardous condition and to minimize inconvenience and delay. During construction, Developer's construction manager, contractor, or assigned contractor, whichever is applicable to the Project, shall be accessible to the City and shall provide sufficient on-site representatives, construction administrators and/or inspectors to assure that the Project will be completed in accordance with the Approved Plans. Specifically, Developer shall have and the City does grant to Developer, its contractors, consultants, agents, employees and representatives, reasonable

access to and use of the Parks to facilitate planning and the preparation of the Plans, together with all other access and use rights to the Parks necessary or desirable for the intended construction of the Improvements throughout the Term of this Agreement. In addition, the City Representative shall be entitled to receive notice of and to attend all regularly scheduled construction meetings, if any, at which a representative of Developer shall be present, and shall be provided with copies of any minutes of all such meetings.

Section 6.10 Vehicular Access; Street Closures. Without the City's prior written consent, Developer shall require its contractors to refrain from interfering with reasonable vehicular access along the City's streets abutting the Parks at all times during Developer's construction activities. Developer, or its contractors, shall be responsible for coordinating street closures and obtaining any permits or approvals required for the necessary street closures with regard to the Project.

Section 6.11 Site Security and Securing Construction Materials. Developer and its construction manager, contractors and subcontractors shall be solely responsible for construction site security and securing construction tools, equipment, supplies and materials when left on the City's property, including but not limited to any staging areas.

Section 6.12 City's Business Inclusion and Development Plan. Developer, and its engineers, construction manager and contractors, shall adopt good faith efforts to comply with the City's Business Inclusion and Development (BID) Plan, to the extent feasible, in hiring and contracting with minority and women-owned local businesses certified by the City or the North Central Texas Regional Certification Agency in the construction of the Improvements for the Project as a whole. Developer will meet with the City prior to commencement of construction to discuss plans for its good faith efforts to comply with the City's BID Plan and (i) upon commencement of construction, (ii) when construction is approximately 50% complete and (iii) upon completion of construction, Developer shall update the City Representative with a written report on its good faith efforts to comply with the City's BID Plan.

Section 6.13 Construction Changes. All material changes to the Approved Plans that affect the Parks shall be submitted for approval in advance to the City Representative. Within ten (10) business days after receipt of the Approved Plans showing material changes affecting the Parks for approval, the City Representative shall either approve or disapprove same. If the City Representative fails to disapprove the proposed material changes within the ten (10) business day period, the City shall be deemed to have approved the plans and specifications for such proposed material changes as submitted. Notwithstanding the foregoing provisions of this Section 6.13 or any other provision of this Agreement, Developer may make changes or additions to the Approved Plans without the City Representative's approval if Developer, in its reasonable judgment, determines that such changes or additions are necessary and appropriate to complete the Improvements within the total budgeted cost set forth in Section 4.2. For purposes of this Section, changes and additions to the Parks or Improvements are "material" if said change or addition or any series or group of changes or additions (i) involve a cost in excess of Fifty Thousand and No/100 Dollars (\$50,000) within any twelve (12)-month period, (ii) entail demolition or removal of part of the Improvements not contemplated by the Approved Plans; or (iii) changes the character of the Parks.

Section 6.14 Construction and Materials Testing. Any construction and materials testing and quality control performed as part of the standard construction process, as agreed to by the City and Developer, shall be performed by certified independent laboratories under contract to Developer or its construction manager to ensure that the Improvements are constructed in accordance with the Approved Plans. In addition, Developer or its construction manager shall furnish the City with copies of the results of all tests. Developer shall have the right to submit to the City a list of certified independent laboratories for advance approval by the City, and the City agrees to notify Developer promptly whether any laboratories on this list are not approved. Furthermore, Developer shall cause the repair or correction of any nonconforming or defective work or other material deviations from the Approved Plans to which the City Representative reasonably and timely objects.

Section 6.15 Staging Area. If necessary and requested by Developer, City shall provide at no cost to Developer or its contractors, to the extent reasonably available, a staging area for use by Developer's contractors for storage of construction supplies and equipment at a location that shall be mutually acceptable to City and Developer. Developer agrees to maintain the staging area and agrees that upon completion of all construction activities, the staging area shall be returned to its original use in an equal or better condition than when originally entered onto, ordinary wear and tear excepted.

Section 6.16 Repair of Properties During Construction. During construction, Developer shall be responsible for obtaining timely repair, replacement or correction of all damage to any property or facilities of the City or any other entity caused by the acts or omissions (whether or not negligent) of Developer, its engineers, construction manager, contractors and subcontractors, to the City's reasonable satisfaction, save and except with respect to demolition anticipated in the Approved Plans. All costs thereof shall be borne by Developer or its contractors, and shall not be a charge against the City. If Developer fails to make timely repair, replacement or corrections of damage, the City may undertake same, but shall not be obligated to so act. The cost of such repairs, replacements or corrections made by the City on account of damage caused by the acts or omissions of Developer, its engineers, construction manager, contractors and subcontractors, shall be reimbursed to the City by Developer.

Section 6.17 Right of City to Make Repairs. City, its agent and employees, shall have the right, at any time and from time to time, to enter the Parks for the purpose of inspection or making any repairs or alterations to the Parks, or any improvements thereon, both interior and exterior, and of every kind or nature which are required of Developer under the Agreement but which Developer has failed to perform; and Developer shall not offer any obstruction, or hindrance to any such repairs or alterations; provided; however, that nothing contained in this paragraph shall be deemed to impose on City any obligation to actually make repairs or alterations. Furthermore, Developer acknowledges, during the Term of this Agreement prior to issuance of the applicable Final Acceptance Letter, that City may require Developer to make reasonable modifications to the Improvements as deemed reasonably necessary by the City Representative.

Section 6.18 Nuisances; the City's Police Powers. Developer and the City recognize the authority of the City under its charter and ordinances to exercise its police powers to protect the public health, safety, and welfare. Such powers extend to Developer and its contractors' construction activities on the City's property, and Developer recognizes the City's authority to

take appropriate enforcement action under its charter and ordinances to provide such protection if warranted. If the City, acting through its appropriate departments and officials, determines that construction in progress should halt in order to protect the public health, safety and welfare, Developer shall halt the work in progress and, if the threat to the public health, safety and welfare is the fault of Developer, Developer shall promptly resolve the situation. If the threat to the public health, safety and welfare is the fault of the City, the City shall promptly resolve the situation. If the threat to public health, safety and welfare is the fault of a third party, the City may (but is not obligated to) take reasonable steps to resolve the situation or cause such third party to promptly resolve the situation, at the third party's expenses.

Section 6.19 Fixtures, Equipment, and Personal Property. Developer may place or install on the Parks such personal property, removable fixtures and equipment. The personal property, removable fixtures, and equipment used in the conduct of activities by Developer placed by Developer on the Parks shall not become part of the real property, but shall retain their status as personal property ("personalty"). Such personalty may be removed by Developer at any time, so long as Developer is not in default under this Agreement and so long as any damage to the Parks occasioned by such removal is thereupon repaired. All other fixtures, equipment, and improvements constructed, installed, or placed upon the Parks shall be deemed to become part of the real property and shall become the sole and exclusive property of City, free of any and all claims of Developer or any person or entity claiming by or through Developer. In the event Developer does not remove Developer's personalty that it is permitted by this section to remove from the Parks within ten (10) days following the termination of the Agreement. City may treat said personalty as abandoned and retain the personalty and treat it as part of the Parks or have the personalty removed and stored at Developer's expense. Developer shall promptly reimburse City for any damage caused to the Parks by the removal of personalty whether removal is by Developer or City.

Section 6.20 Completion of Design and Construction of the Parks.

- (a) Developer shall proceed expeditiously and efficiently in the final design and construction of the Improvements in a high quality and workmanlike manner in accordance with this Article VI and all applicable laws, rules and regulations, including all applicable building and zoning codes. All Improvements shall include a one-year warranty against defects in material and workmanship, which warranty (together with Developer's right, title and interest in all other warranties described in Section 6.24 below) shall be transferred to the City upon the issuance by the City Representative of the Final Acceptance Letter for each completed Park pursuant to Section 6.21. The Improvements shall become the property of the City after they have been fully completed and accepted by the City pursuant to the issuance of each such Final Acceptance Letter (which acceptance shall not be unreasonably withheld).
- (b) If Developer has not completed construction of the Improvements within thirty (30) months from the date of commencement of construction after satisfaction or waiver of all conditions thereto, the City, after furnishing Developer a thirty (30)-day written notice and opportunity to cure, may at its sole discretion take over the construction of the Improvements; *provided, however*, the thirty-month period shall

be extended on a day-for-day basis for any delays resulting from a dispute or disagreement between the parties (including any resulting from a claim that the City caused or contributed to that delay) that they are addressing under Sections 9.1, 9.2 or 10.17 or from force majeure, such as acts of nature, strikes, unavailability of building materials, environmental response actions, civil riots, floods, or material or labor restrictions by governmental authority, or from the City halting work pursuant to Section 6.18 for a threat to the public health, safety and welfare that is not the fault of Developer.

Section 6.21 City Inspection Upon Substantial Completion. Upon substantial completion of the construction of the Improvements for each Park, the City Representative shall review, comment on and approve the punch list and any items identified by the City shall be added to the punch list at the City's request. After (a) the punch list items are performed to meet the Approved Plans, (b) the City Representative receives certification of final completion by Developer's engineers, general contractor, any assigned contractor(s) by the City, or construction manager for each such Park that is in form and substance reasonably acceptable to the City Representative and (c) sixty (60) days have passed following receipt of the certification of final completion pursuant to clause (b), the City Representative shall issue a letter of final acceptance of each such Park ("Final Acceptance Letter"), *provided, however*, that the warranty obligations of the contractor(s) and correction of defective work shall not by such acceptance become the responsibility of the City, but shall remain the responsibility of Developer and its construction manager and its contractor(s) throughout the warranty period. In addition, Developer shall furnish to City Representative the following upon completion of each Park: (i) complete as-built drawings (including an electronic version) within sixty (60) days after construction is complete; and (ii) copies of Certificates of Occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

Section 6.22 Mechanic's Liens. Developer agrees that Developer will not permit any claim of lien made by any mechanic, materialman, laborer, or other similar liens to stand against the Parks in connection with any construction, improvements, maintenance or repair thereof made by Developer or any contractor, agent or representative of Developer. Developer shall cause any such claim of lien to be fully discharged no later than thirty (30) days after the date of filing thereof; *provided, however*, that in the event Developer, in good faith, disputes the validity or amount of any such claim of lien, and if Developer shall give to City such security as City may reasonably require to insure payment thereof and prevent any attempted sale, foreclosure, or forfeiture of the Parks or any portion thereof by reason of such nonpayment, Developer shall not be deemed to be in breach of this section so long as Developer is diligently pursuing a resolution of such dispute with continuity and, upon entry of final judgment resolving the dispute, if litigation or arbitration results there from, immediately discharges said lien.

Section 6.23 Fee Simple Title to the City. The parties acknowledge that fee simple title to all Improvements when made thereto by Developer shall automatically vest in the City without any further action by either party hereto, free and clear of all liens and other encumbrances arising by, through or under Developer (subject to its 45-day cure right in the concluding sentence of Section 6.6), and Developer agrees to take no action before, during or after construction that would prejudice the City's clear fee simple title.

Section 6.24 Construction Warranties. In addition to the one-year warranty transferred to the City under Section 6.20(a), Developer shall formally assign to the City all of Developer's right, title and interest in and to warranties and warranty obligations of the contractor(s) and equipment manufacturers; *provided, however*, correction of defective work shall not by such assignment become the responsibility of the City, but shall remain the responsibility of Developer and its contractor(s) pursuant to the terms of this Agreement. Developer shall administer said warranties during the Term of this Agreement and Developer shall turn over to the City Representative copies of all warranties. Additionally, Developer will reasonably cooperate with and assist the City to the extent needed to enforce any warranties not directly assignable to the City.

Section 6.25 Public Purpose. The parties understand that the construction of the Improvements is for a public purpose, and they are being built upon public property for the benefit of the citizens of Dallas.

ARTICLE VII ADDITIONAL COVENANTS

Section 7.1 Termination of this Agreement. Upon termination of this Agreement for whatever reason, Developer shall peaceably surrender the Parks to the City.

Section 7.2 Repairs.

- (a) ***City's repairs.*** City is not required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Parks, or any part thereof, during the Term of this Agreement or any extension thereof. City shall assist with any repairs caused solely by the City's actions or inactions.
- (b) ***Developer's repairs and operation.*** At all times during the Term of this Agreement or any extension thereof, Developer shall neither cause nor permit any waste to the Parks other than as contemplated by the Approved Plans. From the commencement of construction, Developer shall, at Developer's sole cost and expense, keep and maintain the Parks and all facilities appurtenant, thereto including without limitation landscaping, in good order and repair and, in a safe, clean, sanitary, and attractive condition. Developer shall make any and all additions to or alterations or repairs in and about the Parks that may be required by this Agreement in a good and workmanlike manner, and shall otherwise observe and comply with all public laws, ordinances, and regulations that from time to time are applicable to the Parks.
- (c) ***Condition at end of Agreement.*** Upon termination of this Agreement for whatever reason, Developer shall leave the Parks in the state of repair and cleanliness required to be maintained during the Term of this Agreement and shall peaceably surrender the same to City. If the improvements are not in substantial conformity with this paragraph, City may, at its option and in addition to any other remedies under this Agreement, direct Developer to remove non-complying improvements constructed on the Parks and return that portion of the Parks to its condition existing on the commencement date (as such condition may have been altered in accordance

with the Approved Plans), and Developer shall be obligated to promptly comply at its sole cost and expense or, alternatively, the City may repair same in which event Developer shall immediately pay to City the cost of same.

Section 7.3 Reserved.

Section 7.4 Insurance and Indemnification.

- (a) Developer shall obtain and maintain the Insurance as shown on Exhibit E.
- (b) Developer agrees to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Developer's breach of any of the terms or provisions of this Agreement, or by any negligent or strictly liable act or omission of Developer, its officers, agents, employees or subcontractors, in the performance of this Agreement; except that the indemnity provided for in this Section shall not apply to any liability resulting from the negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of Developer and the City, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this Section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Section 7.5 Security Interests. Developer shall not mortgage, pledge, or otherwise encumber its rights and interests under this Agreement to secure financing. Developer shall not suffer or permit mortgages or liens or claims of same against the Parks or this Agreement, and shall indemnify, defend and hold harmless the City from and against same.

Section 7.6 Damage or Destruction During Construction. In addition to the provisions of Section 6.17 and without limiting the parties' rights and obligations regarding the one-year warranty described in Section 6.20(a), Developer and the City agree as follows:

- (a) ***Effect of damage or destruction.*** Beginning with the commencement of construction and terminating upon the City Representative's issuance of the Final Acceptance Letter pursuant to Section 6.21, in the event of any damage to or destruction of improvements constructed by Developer on a Park from any causes whatever (except as contemplated by the Approved Plans), Developer shall promptly give written notice thereof to the City. Subject to the provisions of Sections 6.16 and 7.6(c), Developer shall promptly rebuild or repair (hereinafter, called "repair") such Park and improvements to the contemplated conditions indicated by the Approved Plans. All such repair shall be performed in accordance with the requirements of Article VI. Developer's duty to repair any damage or destruction of the improvements to any of the Parks shall not be conditioned upon

the availability of any insurance proceeds to Developer from which the cost of repair may be paid. Any of Developer's insurance proceeds payable by reason of such damage or destruction shall be made available to pay the cost of such repair; if Developer receives proceeds in excess of the cost of such repair; Developer may retain such excess. In the event Developer is in material default under the terms of this Agreement at the time such damage or destruction occurs, and has been notified as required under Section 9.1(b), the City may elect to terminate this Agreement and the City shall thereafter have the right to receive and retain all insurance proceeds payable as a result of such damage or destruction. This subsection does not apply to insurance or self-insurance reserves maintained by the City or by Developer and its affiliates beyond the Insurance.

- (b) ***Precondition to repair.*** Before Developer commences repairs involving an estimated cost of more than Fifty Thousand and No/100 Dollars (\$50,000.00), the City Representative may request that Developer furnish to the City (i) an estimate of the cost of the proposed work; (ii) reasonably satisfactory evidence of the coverage of the Insurance; (iii) a performance and payment bond if and as otherwise required under this Agreement; and (iv) such other security as City may require to insure completion of or payment for all work free and clear of liens. Developer shall diligently pursue the repairs in a good and workmanlike manner using only high quality workers and materials, and in conformity with the Approved Plans and all applicable laws, ordinances and codes.
- (c) ***Failure to repair.*** If Developer (i) fails to begin the repair of the improvements within a reasonable period of time, but in all events within ninety (90) days, after damage or destruction by fire or otherwise, (ii) ceases to do so after commencing or (iii) fails to complete the same within a reasonable period of time considering the extent of the damage, then, after notifying Developer as required under Section 9.1(b), in addition to whatever other remedies the City may have either under this Agreement, at law or in equity, the City shall receive the insurance proceeds, or the balance thereof remaining, as security for the continued performance and observance by Developer of Developer's covenants and agreements hereunder, or the City may terminate this Agreement and then receive said amount as partial liquidated damages resulting from the failure of Developer to comply with the provisions of this Article. Finally, City shall have no duty or obligation to repair any damage to the Parks during the Term of this Agreement.
- (d) ***Termination.*** All of Developer's obligations under this Section 7.6 shall terminate upon its completion of the Improvements in accordance with the Approved Plans in all material respects, *provided* that such termination shall in no manner abrogate or otherwise affect Developer's obligation to provide the one-year warranty pursuant to Section 6.20(a).

Section 7.7 Condemnation.

- (a) ***Taking of Whole.*** If the whole of a Park, or so much thereof, shall be taken or condemned for a public or quasi-public use or purpose by any competent authority

and as a result thereof the balance of such Park cannot be used for the same purpose and uses as expressed in Section 1.3 then, and in case of such event, the Agreement term shall terminate with respect to such Park on the date of taking, and any award, compensation, or damage (hereinafter called the “award”) shall be paid to and be the sole property of City, whether such award shall be made as compensation for diminution of the value of the Agreement, the improvements, or the fee interest in such Park or otherwise, and Developer hereby assigns to City Developer’s right, title and interest in and to any and all such award.

- (b) ***Partial taking after construction commences.*** If after construction commences only a portion of a Park shall be so taken or condemned, and as a result thereof the balance of such Park can be used for the same purpose as expressed in Section 1.3, this Agreement shall not terminate with respect to such Park and Developer, at its sole cost and expense, shall repair and restore such Park to an operational whole; *provided, however,* Developer shall not be required to incur expense of repair and restoration that exceeds the amount of the award that is available for payment of the costs of the repair and restoration. Developer shall promptly and diligently proceed to restore the functionality and utility of the remainder of such Park and affected improvements, complying with the procedure set forth in Article VI. For such purpose City shall receive and shall hold in trust the amount of the award relating to the improvements and shall disburse such award to Developer to apply to the cost of such repair or restoration. If Developer does not complete such repair or restoration within a reasonable period after such taking or condemnation, not to exceed one hundred eighty (180) days, then, in addition to whatever other remedies are available to City under this Agreement, at law or in equity, City may receive and retain the entire award or the balance thereof, as partial liquidated damages resulting from the failure of Developer to comply with the provisions of this paragraph. Any portion of such award as may not have to be expended for such repair or restoration shall be paid to City. Any award amount attributable to the fee title to real estate taken shall be paid over directly to City.
- (c) ***Partial taking before construction commences.*** If before construction commences, only a portion of a Park shall be so taken or condemned, and as a result thereof the balance of such Park can be used for the same purpose as expressed in Section 1.3, City shall have no duty or obligation to repair or restore such Park; provided, however, in the event of any such partial taking should City elect not to restore such Park to an operational whole, City or Developer may terminate this Agreement by written notice of said termination delivered prior to commencement of construction. Should Developer not elect to terminate this Agreement, as provided in this paragraph, Developer shall be deemed to have accepted such Park in its post-taking condition and will proceed with construction and performance of this Agreement.
- (d) ***Date of taking.*** The term “date of taking” shall mean the date on which title to a Park or a portion thereof passes to and vests in the condemnor or the effective date of any order for possession if issued prior to the date title vests in the condemnor.

ARTICLE VIII CONDITION(S) PRECEDENT

The obligations of each of the parties to execute and deliver this Agreement shall be subject to the following condition(s) precedent:

Section 8.1 No Injunction. There shall not be in effect any judgment, order, injunction or decree issued by a court of competent jurisdiction restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

ARTICLE IX DEFAULT AND REMEDIES

Section 9.1 Default by Developer. A “Developer Default” shall mean the occurrence of one or more of the following events:

- (a) failure of Developer to maintain, in all material respects, any of the insurance or bonds provided for herein and the failure by Developer to cure the failure within thirty (30) days after the City notifies Developer in writing of the failure to comply in accordance with the notice provisions under this Agreement;
- (b) failure of Developer to comply with any other material term, covenant, or provision of this Agreement, and the failure by Developer to cure the failure within thirty (30) days after the City notifies Developer in writing of the failure to comply in accordance with the notice provisions under this Agreement; and
- (c) appointment of a receiver or trustee to take possession of all or substantially all of the assets of Developer; or if any action is taken or suffered by Developer pursuant to any insolvency, bankruptcy, or reorganization act; or if Developer makes a general assignment for the benefit of its creditors; and such appointment, action, or assignment continues for a period of sixty (60) days.

Notice pursuant to this Section (a “Default Notice”), shall be sent pursuant to Section 10.13. Any opportunity to comply/cure provided herein shall not be required of the City if the same or a substantially similar event has occurred and been the subject of written notice within the previous six (6) months or, with respect to a default under subsections (a) or (c) above, twelve (12) months. Upon the occurrence of a Developer Default, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, actual damages, and termination of this Agreement, provided that in no event shall any party to this Agreement be liable for damages in excess of or in addition to actual damages, including consequential damages, punitive damages, special damages, or indirect damages, and each party to this Agreement waives its rights to the aforesaid damages in excess of or in addition to actual damages. Termination or non-termination of this Agreement upon a Developer Default shall not prevent the City from pursuing its other remedies permitted under this Agreement. The notice of termination by the City shall specify a termination date that is not less than thirty (30) days after the date of the notice of termination.

Section 9.2 City Default and Developer's Remedies. A "City Default" shall mean the City failing to comply with any material provision of this Agreement after written notice of said specific noncompliance and the City's failure to cure the noncompliance within thirty (30) days following such notice. Upon the occurrence of a City Default, Developer may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, actual damages, and termination of this Agreement, provided that in no event shall any party to this Agreement be liable for damages in excess of or in addition to actual damages, including consequential damages, punitive damages, special damages, or indirect damages, and each party to this Agreement waives its rights to the aforesaid damages in excess of or in addition to actual damages. Termination or non-termination of this Agreement upon a City Default shall not prevent Developer from pursuing its other remedies permitted under this Agreement. The notice of termination by Developer shall specify a termination date that is not less than thirty (30) days after the date of the notice of termination.

Section 9.3 Other Termination Provisions. If either (a) the requirements set forth in Sections 5.1, 5.2, 5.3 (except as a result of the City's exercise of its termination rights pursuant to the last sentence thereof) or 5.4, or (b) the City and Developer cannot agree upon (i) the selection of the construction manager or general contractor with respect to West End Plaza, Harwood Park, and Carpenter Park or (ii) the Plans, then upon thirty (30) days prior written notice to the other party, either the City or Developer may terminate this Agreement, whereupon all of the parties' rights and obligations hereunder shall be null and void and the City and Foundation Entities shall have no liability, expense, cost or responsibility with respect to any expenditures by any of the parties prior to the termination.

Section 9.4 Force Majeure. Neither Foundation Entities nor the City shall be liable to each other for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond their respective control, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes, acts of nature, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not in its own power to control. The affected party's obligation shall be suspended during the continuance of the inability then claimed, but for no longer a period. To the extent possible, the party shall endeavor to remove or overcome the inability claimed with all reasonable dispatch. Nothing in this Section shall be construed to preclude the use of available insurance proceeds from the Insurance to remove or overcome any event of force majeure.

ARTICLE X GENERAL PROVISIONS

Section 10.1 Assignment by Developer. Developer shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the City Representative. As an express condition of consent to any assignment, Developer shall remain liable for its obligations pursuant to this Agreement in the event of default by the successor contractor or assignee.

Section 10.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided

in this Agreement, their assigns. The parties hereto and their respective successors and permitted assigns acknowledge and agree that none of the contributors to or affiliates, officers, managers, directors, trustees, shareholders or employees of Developer or Foundation have any personal liability under this Agreement or any related agreement.

Section 10.3 Compliance with Laws and Regulations and Enforceability. This Agreement is entered into subject to and controlled by the Charter and ordinances of the City of Dallas and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America, including without limitation Texas Local Government Code Chapter 253 and Texas Parks and Wildlife Code Chapter 26. Developer and every contractor or agent under Developer's control shall, during the course of performance of this Agreement, comply with all applicable City codes and ordinances, as they may be amended from time to time, and all applicable State and Federal laws, rules and regulations, including environmental protection, pollution, natural resource protection, archeological, or land use laws, rules, regulations, orders or requirements laws and the City's ordinances prescribing conservation measures relating to lawn and landscape irrigation, if applicable. Notwithstanding anything to the contrary contained in this Agreement, the parties acknowledge and agree that this Agreement is enforceable in accordance with its terms under all applicable laws, codes, ordinances, rules and regulations with respect to each of them.

Section 10.4 Nondiscrimination. As a condition of this Agreement, Developer covenants that Developer will take all necessary actions to insure that, in connection with any operations under this Agreement, Developer, its officers, employees and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, age, color, ancestry, national origin, place of birth, religion, sex, sexual orientation, gender identity and expression, military or veteran status, genetic characteristics, or disability unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Developer shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Developer shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from the expiration or termination of this Agreement, with full reasonable access allowed to authorized representatives of City, upon reasonable written request, for purposes of evaluating compliance with this and other provisions of the Agreement.

Section 10.5 Venue. The obligations of the parties to this Agreement shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Agreement, exclusive venue shall lie in Dallas County, Texas.

Section 10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

Section 10.7 Right of Review and Audit. The City may review any and all of the services performed by Developer under this Agreement. The City is granted the right to audit, at the City's election, all of Developer's records relating to the performance of this Agreement. Developer agrees to retain such records for a minimum of three (3) years following the expiration

or termination of this Agreement. Any payment, settlement, satisfaction, or release provided under this Agreement shall be subject to the City's rights as may be disclosed by such audit.

Section 10.8 Conflict of Interest. Developer and its employees, agents or associates are required to make regular, timely, continual and full disclosures to the Director of all significant outside interests and responsibilities that may give rise to a direct or indirect conflict of interest, including, but not limited to, any and all significant outside interests and responsibilities that could reasonably be expected to impair independence of judgment in Developer's performance of all of the services under this Agreement. Such disclosures must be made no later than ten (10) days following the event giving rise to the potential or actual conflict of interest for the duration of the Term. A potential or actual conflict of interest exists when commitments and obligations to the City or widely recognized professional norms are likely to be compromised in Developer's performance of its duties under this Agreement by the existence of Developer's other professional relationships, contracts, obligations, or commitments. Failure to disclose such a conflict of interest may result in the City's immediate termination of this Agreement by the City Manager.

The following section of the Charter of the City of Dallas shall be one of the conditions, and a part of, the consideration of this Agreement, to wit:

"CHAPTER XXII. Sec. 11. FINANCIAL INTEREST OF EMPLOYEE OR OFFICER PROHIBITED –

- (a) No officer or employee shall have any financial interest, direct or indirect, in any contract with the City or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit the officer's or employee's office or position with the City. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the City shall render the Agreement involved voidable by the City Manager or the City Council.
- (b) The alleged violations of this section shall be matters to be determined either by the City's Trial Board in the case of employees who have the right to appeal to the Trial Board, and by the City Council in the case of other employees.
- (c) The prohibitions of this section shall not apply to the participation by the City employees in federally-funded housing programs, to the extent permitted by applicable federal or state law."
- (d) This section does not apply to an ownership interest in a mutual or common investment fund that holds securities or other assets unless the person owns more than 10 percent of the value of the fund.
- (e) This section does not apply to non-negotiated, form contracts for general City services or benefits if the City services or benefits are made available to the City official or employee on the same terms that they are made available to the general public.

- (f) This section does not apply to a nominee or member of a City board or commission, including a city appointee to the Dallas Area Rapid Transit Board. A nominee or member of a City board or commission, including a City appointee to the Dallas Area Rapid Transit Board, must comply with any applicable conflict of interest or ethics provisions in the state law and the Dallas City Code. (Amend. of 8-12-89, Prop. No. 1; Amend. of 8-12-89, Prop. No. 15; Amend. of 11-4-14, Prop. Nos. 2 and 9)”

Section 10.9 Gift to Public Servant. City may terminate this Agreement immediately if Developer has offered, or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

For purposes of this Agreement, “benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

Notwithstanding any other legal remedies, City may require Developer to remove any employee of Developer from the services who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

Section 10.10 Termination.

- (a) City may terminate this Agreement immediately if Developer has offered or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.
- (b) Notwithstanding any other legal remedies, City may require Developer to remove any employee of Developer from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

Section 10.11 Notice of Contract Claim. This Agreement is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against the City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Agreement as if written word for word in this Agreement. Developer, its employees, contractors and agents shall comply with the requirements of this ordinance as a precondition of any claim relating to this Agreement, in addition to all other requirements in this Agreement related to claims and notice of claims.

Section 10.12 Captions. The captions, section numbers, article numbers, and table of contents appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Agreement, nor in any way affect this Agreement.

Section 10.13 Notices. Any notice required or desired to be given under this Agreement shall be in writing with copies directed as indicated herein and shall be personally served or given by mail. Any notice given by mail shall be deemed to have been given when deposited in the U.S. mails, certified return receipt requested and postage prepaid, and addressed to the party to be served at the last address given by that party to the other party under the provisions of this Section. Notice given by courier, fax, or other form of personal delivery shall be deemed given only upon actual receipt. Any change in address shall be promptly given in writing to the other party pursuant to this notice provision. The initial addresses for notice are as follows:

City: City of Dallas
Park and Recreation Department
1500 Marilla, 6th Floor
Dallas, Texas 75201
Attn: Director
Telephone: 214-670-4060
Facsimile: 214-670-4084

With notice copy to: City of Dallas
City Attorney's Office
1500 Marilla 7DN
Dallas, Texas 75201
Attn: Christine Lanners
Telephone: 214-670-3474
Facsimile: 214-670-0622

Developer: Harwood Park LLC
901 Main Street, Suite 609
Dallas, Texas 75202
Attn: Amy M. Meadows
Telephone: 214-977-8257

Pacific Plaza LLC
901 Main Street, Suite 609
Dallas, Texas 75202
Attn: Amy M. Meadows
Telephone: 214-977-8257

West End Plaza Park LLC
901 Main Street, Suite 609
Dallas, Texas 75202
Attn: Amy M. Meadows
Telephone: 214-977-8257

Carpenter Park LLC
901 Main Street, Suite 609
Dallas, Texas 75202
Attn: Amy M. Meadows
Telephone: 214-977-8257

Foundation:

Parks for Downtown Dallas
901 Main Street, Suite 609
Dallas, Texas 75202
Attn: Amy M. Meadows
Telephone: 214-977-8257

Section 10.14 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been included herein, unless the invalid, illegal, or unenforceable provision is reasonably viewed as constituting a material benefit to and primary consideration for either party entering into this Agreement, in which case the City and Developer and, if applicable, Foundation will diligently and in good faith negotiate and implement a substitute provision providing the party, to the greatest extent possible, the equivalent material benefit and primary consideration as the provision held to be invalid, illegal, or unenforceable.

Section 10.15 No Implied Waiver. The failure of any party hereto to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment thereof for the future. The waiver of redress for any violation of any term, covenant, agreement or condition contained in this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. No express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

Section 10.16 Cumulative Remedies. Each right, power, and remedy of the parties provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The exercise or beginning of the exercise by the parties of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the parties of any or all such other rights, powers, or remedies.

Section 10.17 Mediation. If the parties have any dispute or disagreement arising under this Agreement, it shall first be discussed in good faith between the parties in an attempt to reach an amicable solution. As part of that process, the parties will in good faith seek mediation of any such dispute or disagreement. Nothing contained herein shall limit any of the parties from obtaining injunctions or seeking other legal or equitable relief from a court of competent jurisdiction.

Section 10.18 Time of Essence. Time is expressly declared to be of the essence in this Agreement and each and every covenant hereunder (but subject to extension of time for delay beyond the Foundation Entities' reasonable control).

Section 10.19 Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or joint venture by the parties hereto, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of independent contractors. No term or provision of this Agreement or act of Developer, its construction manager, contractors, subcontractors, officers, agents and employees or any person under the control of Developer in the performance of this Agreement shall be construed as making them the agent, servant or employee of the City, or making them eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

Section 10.20 Non-Recordation. Neither this Agreement nor any memorandum thereof shall be recorded in the real property records of Dallas County, Texas.

Section 10.21 Language. The terms used herein shall be applicable to one or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several. The City, Developer and Foundation have freely negotiated this Agreement and its terms. Separate legal counsel has represented the parties. The language in all parts of this Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall not be construed more strictly against a party by reason of authorship.

Section 10.22 Entire Agreement. This Agreement (with all referenced Schedules, Exhibits, attachments, and provisions incorporated by reference) embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties that relate to the subject of this Agreement except for the Pacific Plaza Development Agreement and related Pacific Plaza Operating Endowment Agreement which shall remain in full force and effect and shall control in case of conflict with this Agreement. The parties may enter into separate development, endowment or other agreements for individual Parks if necessary. Except as otherwise provided elsewhere in this Agreement, this Agreement cannot be modified without written agreement of the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED this 11th day of June, 2018, by the City, signing by and through the President of the Park and Recreation Board and its City Manager, duly authorized to execute same by action of the Park and Recreation Board on May 3, 2018 and by the City Council Resolution No. 18-0762 approved by the City Council on May 23, 2018, and by Developer and Foundation, acting through their duly authorized representatives.

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

CITY OF DALLAS
T. C. BROADNAX
City Manager


By: 
Assistant City Attorney

By: 
Assistant City Manager

ATTEST:

PARK AND RECREATION BOARD

By: 
Secretary

By: 
President

PARKS FOR DOWNTOWN DALLAS

By: Amy M Meadows
Amy M. Meadows, President

PACIFIC PLAZA LLC,
a Texas limited liability company

By: Amy M Meadows
Amy M. Meadows, Manager

HARWOOD PARK LLC,
a Texas limited liability company

By: Amy M Meadows
Amy M. Meadows, Manager

WEST END PLAZA PARK LLC,
a Texas limited liability company

By: Amy M Meadows
Amy M. Meadows, Manager

CARPENTER PARK LLC,
a Texas limited liability company

By: Amy M Meadows
Amy M. Meadows, Manager

EXHIBIT A

Carpenter Park Description

EXHIBIT A – CARPENTER PARK DESCRIPTION



EXHIBIT B

West End Plaza Description

Exhibit B

Exhibit A

Field Notes Describing Land To Be Acquired
in Block 25/67, Lot 5A
From LAZ/LA III Texas 1, LP

Being situated in the John Neely Bryan Survey, Abstract No. 149, Dallas County, Texas, and being all of Lot 5A, Block 65/27 (Official City of Dallas Block Numbers) of the Market Point I Addition, an addition to the City of Dallas recorded in Volume 85070, Page 2990 of the Deed Records of Dallas County, and being all of the property conveyed to LAZ/LA III Texas 1, LP, by deed dated April 8, 2008 and recorded in Instrument Number 20080124864 of the Official Public Records of Dallas County, Texas and containing approximately 34,000 Square Feet, or 0.781 Acres of land, according to the plat thereof.

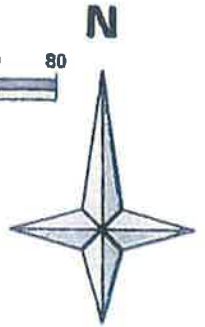
This description is approved as to form.



Scott Holt, RPLS
Survey Program Manager
Office of the Chief City Surveyor
Public Works Department

2/2/2012
Date:

Exhibit B

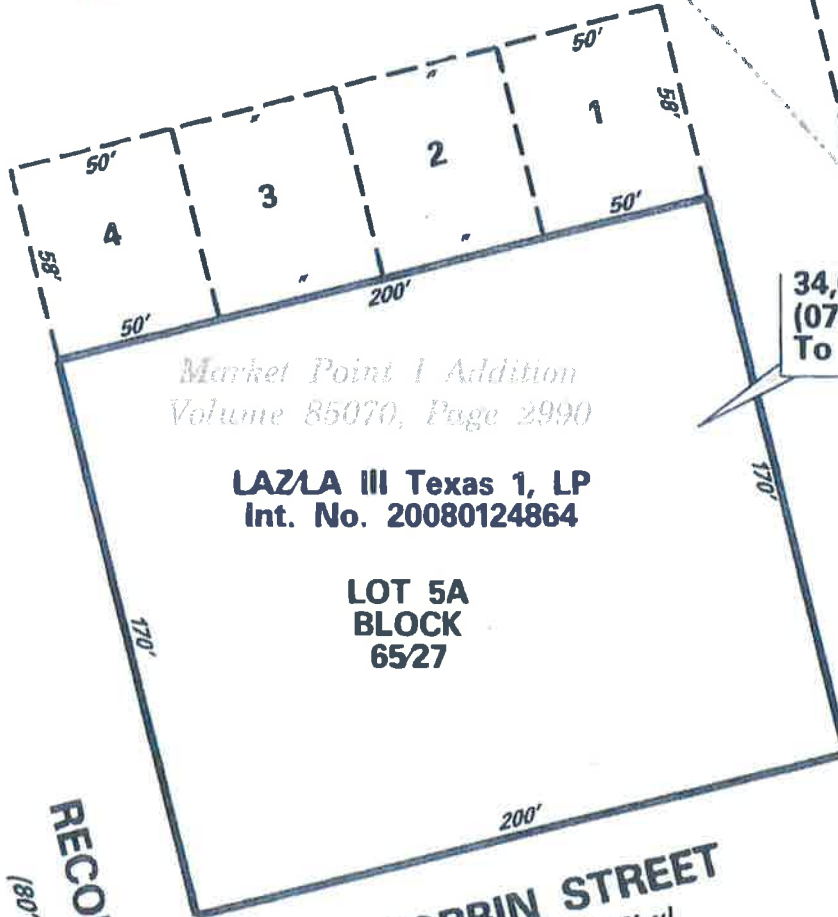


BLOCK 77/204

BLOCK 3/205

MUNGER AVENUE

John Grigsby Survey
Abstract No. 495



34,000 Square Foot
(0781 Acre) Tract
To Be Acquired

Market Point 1 Addition
Volume 85070, Page 2990

LAZLA III Texas 1, LP
Int. No. 20080124864

LOT 5A
BLOCK 65/27

CORBIN STREET
(52' Right-of-Way)

RECORD STREET
(180' Right-of-Way)

MARKET STREET
(180' Right-of-Way)

CORBIN ST.


Original Town of Dallas
Volume D, Page 698

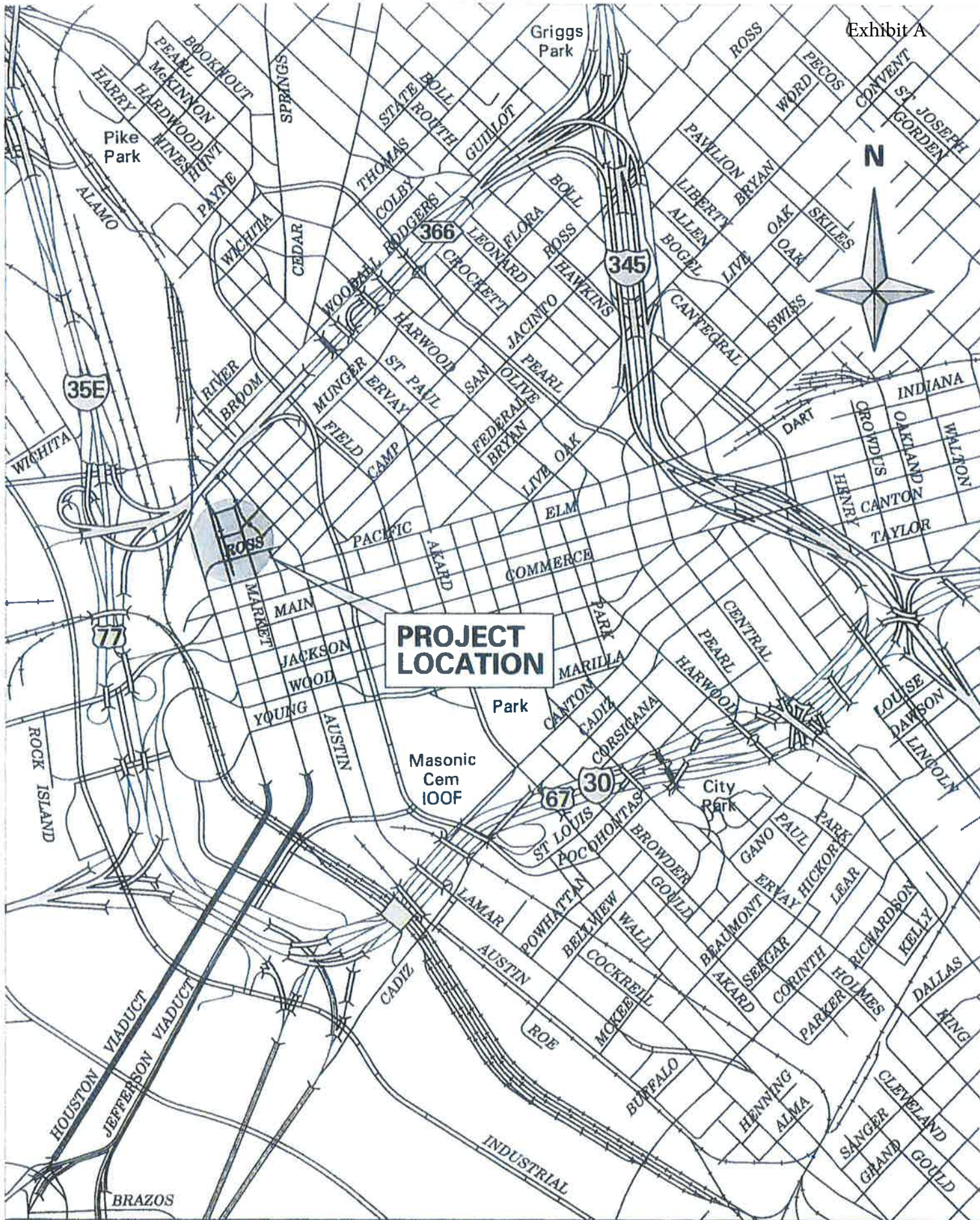
John Neely Bryan
Survey
Abstract No. 149

BLOCK 45/28

FIELD NOTE DRAWING

Sheet 2 of 2

 PROPERTY ACQUISITION			
Lot 5-A, Block 65/27 "West End Plaza;" PBOU757			
DEPT. OF PUBLIC WORKS & TRANSPORTATION			
SURVEY DIVISION CITY OF DALLAS, TEXAS			
OPERNAME	DESIGN FILE NAME	SCALE	DATE
HOLT	N:\ENGR\SURVEY\HOLT\Block 65-27\Final Notes.dgn	As Noted	2-2-12
PARTY CHIEF	CALCULATIONS	FOLDER	FILE NO.
PECK	HOLT	BLOCK 65/27	044D-45



WEST END PLAZA - PBOU757 Exhibit B

EXHIBIT C

Harwood Park Description

EXHIBIT C - HARWOOD PARK DESCRIPTION



Exhibit A

NOT INCLUDED IN PARK



HARWOOD PARK
Parks For Downtown Dallas

March 26 2018

TEN EYCK
LANDSCAPE ARCHITECTS
qim
Pacheco Koch

EXHIBIT D

INTENTIONALLY DELETED

EXHIBIT E

Insurance Requirements

Memorandum



DATE May 22, 2018

TO John Reynolds
PKR

SUBJECT Risk Assessment Review For: Downtown Dallas Priority Parks Dev & Funding Agreement

Please see the attached insurance requirements, which reflect our recommended insurance provisions for this agreement.

Feel free to contact the Office of Risk Management (214-243-1137) should you have any questions regarding the recommendations or would like verification of proper insurance coverage after the contract has been awarded.

For verification of proper insurance coverage after the contract has been awarded, please forward a copy of the contractor's insurance documents (policy, certificates and endorsements) with a completed Certificate of Insurance Review Request form to the Office of Risk Management at ormdallascoi@dallascityhall.com.

Pam Parnell
Pam Parnell
Sr Risk Analyst

Attachment

NOTICE: Insurance requirements are based on the information you provided us. If your specifications or purchase requirements change, please let us know so we can make any appropriate changes in the insurance attachment.

Insurance Requirements

SECTION A.

CONTRACTOR shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in **SECTION C (a)**, certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. The CITY shall be named as an additional insured by endorsement to the policy and thus will be entitled to notice of cancellation of the policy in accordance with Section 1811 of the Texas Insurance Code. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY CONTRACTOR UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

SECTION B.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the services or work performed by CONTRACTOR and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon changes in statutory law, court decisions or other relevant factors. The CONTRACTOR shall acquire and ensure execution of requests for deletions, revisions or modifications of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either CITY or CONTRACTOR).

SECTION C. REQUIRED PROVISIONS

The CONTRACTOR agrees, with respect to the required insurance as documented below, all certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a) The certificate of insurance or policy and endorsements shall be evidenced by delivery to:
 - (i) Parks and Recreation Services, Attention: John Reynolds, Project Manager, 1500 Marilla 6F-south Dallas, Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- b) All certificates of insurance shall identify the service or product being provided, by including the bid number and contract or solicitation name.
- c) All certificates of insurance shall name the City of Dallas as the Certificate Holder.

Insurance Requirements

SECTION D. INSURANCE COVERAGE REQUIRED

Subject to CONTRACTOR'S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of its engagement with the CITY and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage in the following type(s) and amounts:

1. **WORKERS' COMPENSATION and EMPLOYERS' LIABILITY**

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

- Bodily Injury by Accident: \$1,000,000 Each Accident
- Bodily Injury by Disease: \$ 1,000,000 Each Employee
- Bodily Injury by Disease: \$ 1,000,000 Policy Limit

The policy shall include:

- a) An endorsement to waive subrogation in favor of the City of Dallas, its officers, employees and elected representatives, for bodily injury (including death) or any other loss.
- b) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.

NOTES:

- i. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement.
- ii. If CONTRACTOR is a non-subscriber or is self-insured, CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

2. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$ 1,000,000 per occurrence.

The policy shall include

- a) An endorsement naming the City of Dallas and its officers, employees and elected representatives as additional insureds.
- b) An endorsement to waive of subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- c) An endorsement to provide thirty (30) days prior written notice in the event of

Insurance Requirements

cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.

- d) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.

NOTE:

- i. If CONTRACTOR has no owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

3. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate.

The policy shall include:

- a) **ASBESTOS ABATEMENT, If project includes Asbestos Abatement**, CONTRACTOR will provide coverage with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate.
- b) Coverage extended to apply to products/completed operations and XCU (explosion, collapse and underground) hazards.
- c) An endorsement naming the City of Dallas, its officers, employees and elected representatives as additional insured using the broadest form of endorsement available, with such status extended to include the extension of the completed operations coverage as described above.
- d) An endorsement to waive subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- e) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- f) The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the project in question.
- g) The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with the City of Dallas.

Insurance Requirements

- h) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- i) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *twenty-four (24) months* following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy.

4. INSTALLATION FLOATER POLICY

Providing **All-Risk** coverage including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft in an amount equal to one hundred percent (100%) of the contract cost of the project in question. The policy shall include materials delivered and labor performed for the project in question. The policy shall be written jointly in the names of the City of Dallas, Contractor teams, subcontractors, and sub-subcontractors as their interests may appear.

The policy shall have endorsements as follows:

- a) This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- b) Loss, if any, shall be adjusted with and made payable to the City of Dallas as Trustee for the insureds as their interests may appear.

5. ASBESTOS ABATEMENT LIABILITY INSURANCE

If project includes Asbestos Abatement, in addition to ASBESTOS ABATEMENT, CONTRACTOR providing evidence of insurance described in #1, #2, #3, and #4 above, then, including coverage for liability arising from the encapsulation, removal, handling, storage, transportation and disposal of asbestos containing materials with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 annual aggregate.

If the insurance described above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the original policy applicable to this contract.

6. UMBRELLA OR EXCESS LIABILITY INSURANCE

Providing coverage following form of the primary liability coverages described in 1, 2, 3 and 5 above, if Asbestos Abatement included, with minimum combined bodily injury (including death) and property damage limit of \$25,000,000 per occurrence and \$25,000,000 annual aggregate.

If the insurance described above is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall contain the same retroactive date as the

Insurance Requirements

original policy applicable to this contract.

7. Environmental Impairment/Pollution Liability Insurance

Environmental Impairment/Pollution Liability Insurance, to include coverage for, but not limited to, the discharge, clean-up, collection, handling, storage, transportation, delivery and disposal of hazardous material with limit of \$3,000,000 per claim. This requirement applies only if applicable to work being done.

The policy shall include:

- a) An endorsement to waive of subrogation in favor of the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- b) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- c) Provide that CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- d) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this contract.

8. PROFESSIONAL LIABILITY INSURANCE

Professional Liability Insurance to provide coverage against any claim which the CONSULTANT becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$3,000,000 per claim, \$3,000,000 annual aggregate.

The policy shall include:

- a) An endorsement to provide thirty (30) days prior written notice in the event of cancellation to the address as shown in Section C, a (i) and (ii), or in accordance with Section 1811.155 of the Texas Insurance Code, Notice of Cancellation in accordance with the Notice of Insured in the policy for cancellation due to non-payment of premium.
- b) If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than *twenty-four (24) months* following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy

SECTION E. SUBCONTRACTING LIABILITY

(1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the

Insurance Requirements

CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. CONTRACTOR LIABILITY

Approval, disapproval or failure to act by the CITY regarding any insurance supplied by CONTRACTOR or its subcontractors shall not relieve CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate CONTRACTOR from liability.

SECTION G. INDEMNITY

CONTRACTOR agrees to defend, indemnify and hold the CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of its engagement with the CITY, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in CONTRACTOR'S performance under its engagement with the CITY; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and the CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

CONTRACTOR (COMPANY NAME): _____

BY: _____
Signature of Authorized Representative

NAME: _____
Name of Authorized Representative (please print)

DATE: _____