

# 6-23-15 DRAFT



## First Amendment to Parkland Improvement and Use Agreement between City of Austin and West Austin Youth Association

This First Amendment to Parkland Improvement and Use Agreement (“*First Amendment*”) is made to the August 2013 Parkland Improvement and Use Agreement for the ball fields and improvements on the City-owned parcel of land known as Lamar Beach and Town Lake Metropolitan Park (the “*Original Agreement*”).

This First Amendment is entered into between the City of Austin, a home-rule municipal corporation of the State of Texas, acting by and through its Assistant City Manager (the “*City*”) and the West Austin Youth Association (“*WAYA*”) through its duly authorized representative.

The parties agree to amend the Original Agreement as follows:

### I. Section III, Subsection A is amended as follows:

- A. WAYA shall be responsible, at its sole cost, for the design, permitting, bidding, and construction of the Improvements. The Improvements shall be installed and constructed within the Park in accordance with the Timeline (defined below) and according to the plans, specifications, site plan and construction documents prepared by WAYA and reviewed and approved by the City prior to start of construction (the “Design Development Plan”) as the Design Development Plan may be amended or waived from time to time by WAYA with approval from the City (collectively, the “Construction Project”). The Parties agree and acknowledge that the description of the Improvements provided in this Agreement as **Exhibits “A” and “B”** is conceptual and preliminary in nature and the details of such description (such as the description of buildings or amenities such as batting cages, etc.) is subject to change, depending on regulatory requirements or planning restraints. The Parties agree that if a portion of the Park is required by the City for the construction of the Pressler Street extension project or for other uses as set forth in the adopted Lamar Beach Metro Park Master Plan, then that portion of the Park shall not be available for construction of the Ball Fields and Improvements described in Exhibits “A” and “B”. With the exception of the limitation explicitly set forth in the previous sentence, the foregoing sentence does not otherwise limit (nor does it extend) any WAYA rights under the Original Agreement and its exhibits, including without limitation any WAYA’s rights to build the Ball Fields and Improvements as described in Exhibits “A” and “B” in the Park.

### II. Section III, Subsection D is amended as follows:

- D. Following the City’s review and approval of the Design Development Plan, approval of a site plan for the Construction Project, and prior to receipt of an approved building permit to install and construct

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the Construction Project in the Park, WAYA shall present to the City, for its review and approval, a construction schedule for construction and installation of the Construction Project (the "Timeline"), approval by the City not to be unreasonably withheld. The Parties agree that WAYA shall complete the Construction Project not later than ten years after the Lamar Beach Metro Park Master Plan is adopted by City Council [~~within six years of the Effective Date of this Agreement~~]. The time within which the Construction Project must be complete is tolled during any time when there is a material and substantial denial of access as a direct result of the Pressler Street extension project that materially and substantially interferes with WAYA's ability to complete the Construction Project. Following the City's approval of an acceptable Timeline, WAYA shall thereafter adhere to that approved schedule. Changes to the Timeline may be made by written mutual agreement between WAYA's President and the Director without a formal amendment to this Agreement. Construction work on the Construction Project shall not commence until the City has issued a written "Notice to Proceed". All construction work shall meet or exceed City standards. This Agreement may be terminated by the City if the Improvements are not completed within ten years after the Lamar Beach Metro Park Master Plan is adopted by City Council.

**III.** Section IX, Subsection A is amended as follows:

- A. This Agreement shall have an effective date that is the last date this Agreement is executed by a party (the "Effective Date"). The term of this Agreement shall extend 25 years from the completion date established in the initially approved Timeline [~~Effective Date~~] (the "Term"), unless the Agreement has otherwise been terminated as provided in Section III, Subsection D or otherwise. Amendment to the Timeline after initial approval shall not further extend the Term. The [~~Director~~] City may extend the Term for one period of up to twenty five [~~ten~~] years, by providing WAYA at least six months prior written notice of the extension prior to the expiration of the preceding term of this Agreement. The option to extend is at the City's sole discretion. Any such extension shall be on the same terms as herein provided of the original term of this Agreement unless officially amended.

**IV.** The third bullet under Section 22 in Exhibit D (*Ball Fields Maintenance Standards*) is amended as follows:

- Parking Lots: Inspect monthly, Maintain surface with minimal holes. Resurface and repaint stripes as needed [~~every two years~~].

**V.** Section VI is amended to add a new subsection H to read as follows:

H. As directed in Resolution No. 20140807-114, the City will negotiate a mutual parking and controlled access agreement which provides for adequate parking areas during WAYA scheduled programming.

**VI.** All other terms and conditions of the Original Agreement remain in full force and effect.

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**VII.** This First Amendment is effective upon execution by all parties and remains in effect until the Original Agreement terminates.

This First Amendment to Parkland Improvement and Use Agreement is executed by:

**CITY OF AUSTIN:**

\_\_\_\_\_  
Marc A. Ott  
City Manager

Date: \_\_\_\_\_

**WEST AUSTIN YOUTH ASSOCIATION, INC.:**

\_\_\_\_\_  
Wayne Brumley  
President

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City of Austin Law Department