

**LEASE AND PARKLAND IMPROVEMENT AGREEMENT BETWEEN
THE CITY OF AUSTIN AND WILLIAMSON COUNTY, TEXAS REGARDING
BRUSHY CREEK REGIONAL TRAIL**

The parties to this Lease and Parkland Improvement Agreement Between the City of Austin and Williamson County regarding the Brushy Creek Regional Trail (the "Agreement") are the City of Austin, a municipal corporation situated in the Counties of Travis, Hays and Williamson, State of Texas ("City"), and Williamson County, a political subdivision of the State of Texas ("County"). The City and the County are sometimes referred to collectively in this Agreement as the "Parties" and individually as a "Party."

RECITALS:

A. The City is the owner of that certain 37.34 acre tract of land, more or less, in northwest Austin, which is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Pebble Creek Tract").

B. The County is in the process of designing and constructing a recreational trail and related appurtenances as an extension of the presently existing Brushy Creek Regional Trail, recognized by the US Department of the Interior as a National Recreational Trail, (collectively, the "Trail"), on a portion of the Pebble Creek Tract.

C. The City and County have operated under a resolution agreement, established in 2000 and reaffirmed in 2004 and June 18, 2008, that promotes the efficient use of land and resources by both the City and the County by combining efforts and resources to expand the Central Texas trail network. The City and County agree that the co-location of facilities reduces duplication of services and improves the delivery of services to citizens through a more efficient use of public funds. The City and the County desire to cooperate to assist in the construction of the Trail in an expeditious and efficient manner.

D. This Agreement is an interlocal agreement authorized and governed by Chapter 791 of the Texas Government Code. Each party represents and warrants that it is carrying out a duly authorized governmental function and the mutual promises exchanged represent good and valuable consideration. Each party represents and warrants that the compensation to be made to the other party as set forth are in amounts that fairly compensate the performing party for the services or functions and are made from current revenues available to the paying party.

NOW, THEREFORE, in consideration of the above recitals, the mutual benefit that both parties shall receive from the construction of the improvements described herein below, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the City and the County hereby agree as follows:

AGREEMENT:

1. **Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue for a term of fifty (50) years, unless terminated earlier as provided in this Agreement. Subject to such termination provisions, upon the expiration of the initial term, the term of this Agreement shall automatically renew for one (1) additional term of fifty (50) years on the same terms and conditions unless the City notifies the County in writing that it does not wish to renew the Agreement prior to the expiration of the initial term. If the term is not renewed, the County shall have the right to remove within ninety (90) days after the date of termination the furniture and equipment and all other personal property of the County. Any County property not removed within said period shall be deemed property of the City.

2. **Leased Premises.**

The City hereby leases to the County and the County hereby leases from the City, on the terms and conditions set forth herein, the Pebble Creek Tract (the "Leased Premises"). The Leased Premises shall be used only for the construction and operation of the Trail and all required access, utilities and other installations necessary to comply with applicable City codes.

3. **Design.**

A. The Parties acknowledge that the County has provided the necessary design services, at the County's expense (including any redesign work) to achieve such Trail. The design and construction of the Project Site Improvements (hereinafter defined), are sometimes hereinafter referred to as the "Project."

B. The County may make any and all design and/or construction changes for the Trail, including approval of written change orders, as the County deems necessary or desirable from time to time. The County agrees to be responsible for the construction of all site work and site utilities on the Leased Premises required for the construction of the Trail (collectively, the "Project Site Improvements").

C. Upon completion of the Project, this Agreement shall not affect in any way the right of each Party to modify, alter, repair, remodel, or renovate improvements owned by a Party provided that such a modification, alteration, repair, renovation or remodeling does not permanently or unreasonably affect in an adverse manner or interfere with the other Party's use of such facilities pursuant to the terms of this Agreement. The City agrees that the County's rights under this Agreement include the right to install temporary buildings (portable buildings) related to the Trail on the Leased Premises and the right to construct on the Leased Premises facilities and improvements ancillary to the Trail for public safety, convenience and general welfare.

4. **Construction/Project Costs.**

A. The County has adopted a construction budget and schedule for the Project Site Improvements acceptable by reference herein to the City. The County shall construct the Project Site Improvements, endeavoring to diligently prosecute completion of the Project Site

Improvements within the fixed construction budget and on schedule, subject to change orders as may be approved by the County. The County shall observe all applicable state laws, City codes and ordinances and County policies regarding the construction of the Project Site Improvements.

B. The County shall require its contractors and agents to conduct their operations within the Leased Premises and shall make reasonable efforts to prevent its contractors and employees from using or damaging the remaining park land beyond the area of the Project Site Improvements. The City hereby grants to the County a temporary construction easement over, under, upon and across the Leased Premises for the purpose of construction and installation of the Project Site Improvements. The temporary construction easement granted herein shall expire automatically upon the County's final completion of all construction related to such installations.

C. The County warrants that it has appropriated and committed the necessary funds for its share of the costs of the Project.

5. **Ownership, Maintenance.** The County shall own the Trail, and shall at its own expense, maintain all of the Leased Premises in good condition and repair, throughout the term of this Agreement. Without limiting the foregoing, as partial consideration for the rights granted to the County pursuant to the terms of this Agreement, the County shall, at its own expense, be responsible throughout the term of this Agreement (i) for trash pickup for all dumpsters serving the Leased Premises, (ii) for maintenance of the grounds along the Trail and the mowing of any grass necessary for health and safety within the Trail route, and (iii) for the maintenance of the following shared facilities ("Shared Facilities") serving the Project: the detention and water quality ponds, the parking lots, the internal drives, the lighting for the parking lots and driveways, and the Trail corridor (to the extent such facilities are constructed).

6. **Operations.**

The County shall have exclusive control of the Trail including rules, policies and governance and shall conform such rules, policies and governance to that in effect for the remainder of the Brushy Creek Regional Trail. The County agrees and acknowledges that the City, however, may use or lease the Leased Premises for purposes that do not conflict or interfere with the County's or the public's use of either the Trail or any of the Trail's related facilities and/or appurtenances. The County further agrees that residents of the City of Austin shall not in any way be restricted from using either the Trail or any of the Trail's related facilities and/or appurtenances on terms less than equal to those of residents of the County.

7. **Casualty and Destruction/Liability Insurance.**

A. To the extent that County does not self-insure the Trail improvements, the County shall maintain casualty insurance on Trail improvements and shall endeavor to restore or rebuild such improvements in the event they are wholly or partially destroyed or damaged during the term of this Agreement by fire, flood or other casualty and shall endeavor to maintain and rebuild facilities to promote an integrative use.

B. In addition, to the extent the Parties do not self-insure themselves against any obligations arising from third-party claims, the Parties agree to obtain and maintain separate

policies of insurance to cover any obligations arising from said third-party claims. Such coverages may be obtained through an authorized self-insurance program or insurance pool.

8. **Default/Remedies.**

A. It shall be an event of default hereunder if the County fails to comply with the terms and conditions of this Agreement and such failure continues for a period of sixty (60) days following the County's receipt of written notice regarding same from the City. Provided, however, if the default is curable but cannot reasonably be cured within the 60-day cure period, and if the County commences to cure the default during the 60-day cure period and diligently proceeds thereafter to cure such default, then the cure period shall be extended for a reasonable time not to exceed an additional thirty (30) days (for a total of 90 days) in order to provide the County the opportunity to cure the default.

B. It shall be an event of default hereunder if the City fails to comply with the terms and conditions of this Agreement and such failure continues for a period of sixty (60) days following the City's receipt of written notice regarding same from the County. Provided, however, if the default is curable but cannot reasonably be cured within the 60-day cure period, and if the City commences to cure the default during the 60-day cure period and diligently proceeds thereafter to cure such default, then the cure period shall be extended for a reasonable time not to exceed an additional thirty (30) days (for a total of 90 days) in order to provide the City the opportunity to cure the default.

C. If an event of default occurs by either party and the default is not cured within the applicable cure period, the Agreement may be terminated or enforced in law or in equity, including a suit for specific performance and/or for damages. The Parties agree that remedies shall be cumulative and that specific performance shall be an available remedy due to the difficulty in determining damages that may accrue as a result of a material breach of this Agreement by the other party. Such rights of either Party upon breach shall be subject to the procedures set forth in Paragraph 9 below.

D. Notwithstanding any provision of this Agreement to the contrary, if the County has failed to maintain the improvements or a portion of them situated on the Leased Premises for which the County is responsible for maintenance hereunder, and as a result, such improvements constitute a danger to the public and maintenance or repair necessary to alleviate such danger to the public has not been made within the applicable cure period set forth in Paragraph 8.A above (provided that such written notice to the County describes with specificity the danger to the public that needs to be alleviated), then the City may, but shall not be obligated to, perform such maintenance or repair reasonably necessary to alleviate such danger without first following the procedures set forth in Paragraph 9 below, and within thirty (30) days of receipt of an invoice from the City and sufficient evidence of the costs incurred, the County will reimburse the City for its actual out-of-pocket costs incurred pursuant to this Paragraph 8.D.

9. **Dispute Resolution Process.**

A. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following procedures ("Dispute Resolution Process").

B. The aggrieved party shall notify the responding party of the dispute, by way of a meeting or a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding party shall attend said meeting or respond to the writing within a reasonable time as may be determined by the circumstances alleged.

C. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to effect an agreed resolution of the issue.

D. If the Parties' designated representatives reach an impasse concerning the dispute, the Williamson County Judge and the City's City Manager shall meet to discuss the dispute.

E. If the Parties reach an accord at any stage of the meeting, they shall reduce their agreement to a writing which shall constitute an amendment to this Agreement with respect to the subject matter of the notice of the dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matter other than the subject matter submitted to the Dispute Resolution Process.

F. If the Parties are unable to reach a resolution of the dispute within a reasonable time, either party may pursue such legal and equitable remedies as are available to them under this Agreement.

10. **Termination.** Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated as follows:

A. Mutual Agreement. This Agreement may be terminated at any time by mutual agreement of the Parties, as evidenced by a written agreement to terminate.

B. Termination by County. This Agreement may be terminated by the County at any time by delivering written notice of termination to the City not later than one (1) year before the effective date of termination. If the County so terminates, the County shall have the right to remove within ninety (90) days after the date of termination the furniture and equipment and all other personal property of the County. Any County property not removed within said period shall be deemed property of the City. The County agrees to leave the Trail in a useable condition at the termination of this Agreement.

11. **Interpretation.** Although drawn by one party, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

12. **Administration.** PARD shall administer this Agreement on behalf of the City. The County's Parks and Recreation Department shall administer this Agreement on behalf of the County. Either Party may designate a new administrator upon written notice to the other.

13. **Application of Law.** This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

14. **Survival.** Conditions and covenants of this Agreement which by their terms are performable after the termination, expiration or end of the Agreement, shall survive such termination, expiration or end and remain fully performable.

15. **Venue.** Venue for all lawsuits concerning this Agreement will either be in the county wherein the Project is located or in the Austin Division of the Western Federal District of Texas .

16. **Assignment.** Neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

17. **Notices.** Any notice or request required by this Agreement must be in writing, and may be given or be served by depositing the same in the United States Postal Service, postal prepaid, and certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party (or to an officer of such party), or by telecopy, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner herein above described shall be effective from and after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the Parties shall, until changed as herein provided, be as follows:

For the County: Williamson County
Parks and Recreation Department
350 Discovery Blvd., #207
Cedar Park, Texas 78613
Telephone: (512) 260-4283
Facsimile: (512) 480-4237
Attn: Mr. Jim Rodgers
Director, Parks and Recreation

For the City: City of Austin
Office of the City Manager
301 W. 2nd Street, Box 1088
Austin, Texas 78767-1088
Telephone: (512) 974-2200
Facsimile: (512) 974-2833
Attn: City Manager

However, the Parties hereto shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice to the other party.

18. **No Third Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

19. **Non-waiver.** Failure of a party to exercise any right or remedy in the event of default by the other party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

20. **Authority of Signatories.** The Parties represent that the individuals signing this Agreement on their behalf possess full power and authority to enter into this Agreement from their respective governing boards in compliance with the laws of the State of Texas.

21. **Further Assurances.** Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

22. **Retention of Defenses.** The Parties agree that, neither this Agreement nor the operation or use of the Project by the Parties shall affect, impair nor limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated upon premises defects.

23. **Attorney's Fees.** Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement on the subject matter hereof, shall be entitled to recover court costs and reasonable attorney's fees and other litigation expenses from the non-prevailing party.

24. **Severability.** If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

25. **Incorporation of Recitals.** The recitals which appear above are found by the City and the County to be true and are incorporated into this Agreement by reference.

26. **Warranty of Peaceful Possession.** City covenants that the County, upon performing and observing the covenants and agreements herein contained, shall and may peaceably and quietly have, hold, occupy and use and enjoy the Leased Premises during the term hereof, and may exercise all its rights hereunder, subject only to the provisions of this Agreement and applicable governmental laws, rules and regulations.\

27. **Force Majeure.** If the party obligated to perform is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the

fault or negligence of said party, the other party shall grant such party relief from the performance of this Agreement. The burden of proof for the need of such relief shall rest upon the party obligated to perform. To obtain release based on force majeure, the party obligated to perform shall file a written request with the other party.

28. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

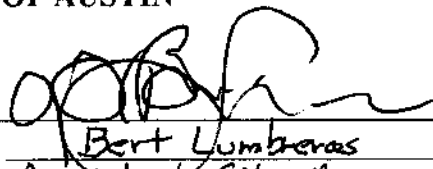
29. **Entire Agreement.** This Agreement is the entire agreement of the Parties. This Agreement may not be altered or amended except by mutual written agreement.

Executed to be effective as of the date last signed by the Parties (the "Effective Date").


Approved as to form:

CITY OF AUSTIN

Assistant City Attorney

By: 
Name: Bert Lumberas
Title: Assistant City Manager
Date: October 6, 2008

WILLIAMSON COUNTY

By: 
Name: Dan A. Gattis
Title: County Judge
Date: 10-17-08

PEBBLE CREEK TRACT

All that certain tract of land situated in Williamson County, Texas, generally described as 37.34 acres of land, more or less, out of and part of the Samuel Damon Survey, Abstract No. 170, and being a portion of that 591.144 acre tract identified as Parcel One, Tract II, conveyed to Pebble Creek Joint Venture by Deed recorded as Document No. 9843836 in the Official Records of Williamson County, Texas; said 37.34 acres of land being more particularly described in a Special Warranty Deed recorded as Document No. 2005103350, Official Records of Williamson County, Texas.

"AS-IS" PROVISION

IT IS UNDERSTOOD AND AGREED THAT GRANTEE ACCEPTS THE PROPERTY IN ITS "AS IS, WHERE IS" CONDITION WITH ALL FAULTS AND WITH ANY AND ALL LATENT AND PATENT DEFECTS. IT IS FURTHER UNDERSTOOD AND AGREED THAT EXCEPT FOR THE SPECIAL WARRANTIES OF TITLE MADE HEREIN GRANTOR HAS NOT MADE AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN THE WARRANTY OF TITLE SET FORTH HEREIN), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS (SPECIFICALLY MAKING NO WARRANTY OF COMPLIANCE WITH THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OF 1990), INGRESS OR EGRESS, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY INCLUDING, WITHOUT LIMITATION: (i) THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY ELECT TO CONDUCT THEREON, AND THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING THE PRESENCE OF ASBESTOS) OR COMPLIANCE WITH ALL APPLICABLE LAWS, RULES OR REGULATIONS; (ii) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY; (iii) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS INCORPORATED INTO ANY OF THE PROPERTY; AND (iv) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY. GRANTEE AGREES THAT WITH RESPECT TO THE PROPERTY, GRANTEE HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF GRANTOR OR ANY AGENT OF GRANTOR. GRANTEE REPRESENTS THAT GRANTEE IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT GRANTEE IS RELYING SOLELY ON GRANTEE'S OWN EXPERTISE AND THAT OF GRANTEE'S CONSULTANTS, AND THAT GRANTEE HAS CONDUCTED SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF INCLUDING THE POSSIBLE PRESENCE OF ENVIRONMENTAL CONTAMINATION, AND SHALL RELY UPON SAME, AND SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY GRANTEE'S INSPECTIONS AND INVESTIGATIONS. GRANTEE ACKNOWLEDGES AND AGREES THAT UPON CLOSING, GRANTOR IS CONVEYING TO GRANTEE AND GRANTEE IS ACCEPTING THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS" AND WITH ANY AND

ALL LATENT AND PATENT DEFECTS, AND GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT THERE ARE NO ORAL AGREEMENTS, WARRANTIES OR REPRESENTATIONS, COLLATERAL TO OR AFFECTING THE PROPERTY BY GRANTOR, ANY AGENT OF GRANTOR OR ANY THIRD PARTY.

RESTRICTIONS

The County ("Grantee") warrants that its further covenant, consideration and condition of accepting this Lease is that the following restrictions shall in all things be observed, followed and complied with:

- (a) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any Trail or public facility which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.
- (b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any Trail or public facility which creates, maintains, reinforces, renews, or encourages, or which tends to create, maintain, reinforce, renew or encourage, a dual Trail system.

These restrictions and conditions shall be binding upon Grantee and Grantee's heirs, personal representatives, successors and assigns, for a period of fifty (50) years from the date hereof; and in case of a violation of either or both of the above restrictions, the estate herein granted shall, without entry or suit, immediately revert to and vest in the City ("Grantor") and its successors, this instrument shall be null and void, and Grantor and its successors shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of Grantor and its successors shall be a waiver of the operation or enforcement of such condition.

The restriction set out in (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The restriction specified in (b) above shall be construed to be for the benefit of any public Trail County or any person prejudiced by its violation.