

Park Adoption Agreement

This Park Adoption Agreement (“this Agreement”) is between the City of Nichols Hills, Oklahoma, a municipal corporation, (“the City”) and _____ (“Park Adopter”) effective _____, 20____. The City is grateful for and commends Park Adopter for assuming the responsibilities set out in this Agreement.

Recitals

A. Park Adopter applied to the City to adopt [*description of applicable Park*] (“the Park”) pursuant to Article VII, *Park Adoptions*, of Chapter 34, *Parks and Recreation*, of the Nichols Hills City Code, pursuant to which adopters may adopt and improve parks in the City by the installation of hardscape and constructed facilities, installation of Park Amenities (as defined in Chapter 34), and/or planting a significant number of trees and plants.

B. Park Adopter’s adoption consists of the improvements generally described as follows:

[Insert description of approved improvements, number and description of trees and plant material, etc.]

(collectively, “the Improvements.”). The Improvements are more particularly described in the plans included in Park Adopter’s application. A copy of the plans is attached.

C. On _____, 20____, the Nichols Hills City Council approved Park Adopter’s application authorizing the City to issue Park Adopter a special permit for the adoption. That approval was subject to the City and Park Adopter entering into this Agreement.

Agreement

1. Relationship of the parties; cooperation and communication with Parks, Inc. The City and Park Adopter acknowledge that fulfilling the purpose of this Agreement for the benefit of the Park and the City of Nichols Hills will require the good faith cooperation and communication between themselves and Parks, Inc. Park Adopter, the City, and Parks, Inc. will each designate a representative(s) from time to time to facilitate cooperation and communication between them regarding the Improvements. Notices required by this Agreement will be made by notifying such representatives.

2. Installation of the Improvements.

A. The special permit. The special permit shall be a license to proceed with work but shall not constitute authority to violate any provisions or requirements of any ordinance, rule, or regulation of the City. If the Nichols Hills City Code is amended after issuance of the special permit but prior to completion of installation of the Improvements, work must comply with provisions of the amended Code. The special permit shall become invalid if the authorized work is not commenced within six months from the date of issuance. The special permit may be extended by the City prior to expiration. The special permit shall also expire and become invalid if the authorized work is suspended or abandoned for a period in excess of 30 calendar days. Thereafter, a new special permit will be required.

B. Installation cost. Park Adopter agrees to purchase all construction materials, trees, plant material, and all other materials provided for in the plan and provide all labor for installation of the Improvements at Park Adopter’s sole cost and expense without any reimbursement by the City or Parks, Inc.

C. Guarantee. Park Adopter must provide a Guarantee (“the Guarantee”) whereby Park Adopter agrees to complete installation of the Improvements. That Guarantee may be in the form of any of the following:

i. Surety bond issued by an institution licensed in the State of Oklahoma as a surety company with an AAA rating or otherwise approved by the City Council, such bond to be released only when installation of the Improvements is complete as required by this Agreement.

ii. Escrow account of either cash or other instrument readily convertible into cash in escrow with a bank or savings and loan institution, such escrowed amount to be held in trust until released by the City Council and not used by Park Adopter as security in any other matter and to be payable to the City if Park Adopter fails to complete installation of the Improvements as required by this Agreement.

iii. Letter of credit from a bank, trust company, or savings and loan institution, that may not be withdrawn or reduced unless approved by the City Council and that is payable to the City if Park Adopter fails to complete installation of the Improvements as required by this Agreement.

In each case, the Guarantee must be in the amount of one hundred ten percent (110%) of the full amount of the cost to complete installation of the Improvements as estimated by the City Manager and/or the City Engineer and approved by the City Council and licensed in the State of Oklahoma. The amount of the Guarantee may be reduced from time to time as installation of the Improvements is completed based on the ratio that the cost of installation of the Improvements completed bears to the total cost of installation of the Improvements. In no event may any Guarantee be reduced below ten percent (10%) of its initial amount.

D. Plans and specifications. Installation of the Improvements must conform to the plans and specifications approved by the City Council. Park Adopter may not initiate any change, addition, or deletion to the plans and specifications unless approved in advance and in writing by the City Manager and Parks, Inc.

E. Contractors. Installation of the Improvements must be done by contractors and not volunteers unless approved in advance and in writing by the City Manager and Parks, Inc. The contractors retained by Park Adopter (“the Contractors”) to install the Improvements are subject to the City’s prior written approval and must be licensed, if applicable, and registered with the City as provided in Article XI, *Contractor Registration*, Chapter 8, *Buildings and Building Regulations*, or Chapter 48, *Vegetation*, of the Nichols Hills City Code, as the case may be. Park Adopter is solely responsible for all charges by the Contractors. Park Adopter must ensure that the Contractors comply with applicable provisions of the Nichols Hills City Code relative to their work and any verbal instructions given by the City or Parks, Inc. before, during, and after their work.

F. Installation status. Park Adopter must keep the City Manager and Parks, Inc. informed as to the status of installation of the Improvements.

G. Required notices by Park Adopter. Park Adopter will immediately and in detail notify the City of any accidents and occurrences arising out of or during installation of the Improvements in the Park that result in injuries or first aid to persons, spills or releases of pollutants or contaminants, or damage to property. Park Adopter will also immediately notify the City if it becomes aware of any hazard or safety risk in the Park.

H. Compliance with laws. Park Adopter will ensure that the Improvements comply with all applicable laws, including the Nichols Hills City Code and the accessibility requirements of the Americans with Disabilities Act.

I. Inspection of the Improvements; inspection fee. The City and Parks, Inc. will provide for inspection of the Improvements from time to time during their installation to ensure satisfactory completion of installation. Inspection of hardscape and constructed facilities will be done by the City Engineer. If the City Engineer, City Manager, or Parks, Inc. find, upon inspection, that the Improvements (or any part of them) have not been installed as required, Park Adopter will be responsible for properly completing installation of the Improvements. A nonrefundable fee in the amount established in the City Fee Schedule must be paid to the City by Park Adopter for all inspections.

J. Requirements for satisfactory completion of Improvements. The City Council will not deem the Improvements to be satisfactorily completed and installed and will not reduce or release the Guarantee until the City Manager provides a certificate stating that the Improvements have been satisfactorily completed and installed and the City Manager and Parks, Inc. so inform the City Council. The Improvements must then be free and clear of liens and encumbrances. Further, for hardscape and constructed facilities, Park Adopter’s engineer or surveyor must have

submitted to the City Engineer a certified “as-built” survey plat of such of the Improvements satisfactory to the City Engineer.

K. Time period for completion; failure to complete. Park Adopter must complete installation of the Improvements within _____ [months / years] from the date of the City’s issuance of the special permit. If installation of the Improvements is not completed within the time period required, the City Council’s approval of the application and the special permit will be deemed to have expired. Further, if applicable, the City may declare the bond or other instrument to be in default and require that the Improvements be installed, or the City may obtain the funds under the Guarantee and complete installation of the Improvements.

L. Dedication of the Improvements. The City Council will accept dedication of the Improvements (and re-name the Park if requested and approved) by Resolution when installation of the Improvements is satisfactorily complete as set out in subsection J of this Section. Thereafter, the Improvements will be owned by the City and dedicated to it.

3. Maintenance of the Improvements.

A. Endowment. Upon execution of this Agreement, Park Adopter will pay \$ _____ [to be based on the square footage of the Park] to Parks, Inc.’s endowment fund.

B. Yearly Fee. In addition to the endowment payment, Park Adopter will pay a yearly fee of \$ _____ [to be based on the square footage of the Park] to Parks, Inc. which amount represents the amount reasonably expected for maintenance costs for the Park per year. The fee will be payable to Parks, Inc. on the first day of each calendar year.

C. Maintenance. After dedication of the Improvements and upon payment by Park Adopter of the yearly fee, the City and Parks, Inc. will maintain the Improvements. However, the City does not guarantee the permanency of the Improvements and will not be obligated to replace the Improvements or any part of them that is stolen, vandalized, deteriorated or damaged unless sufficient funds previously paid by Park Adopter are then available to do so. The City may also remove diseased and dead trees and plant material and is not required to replace trees or plants that die unless sufficient funds previously paid by the Park Adopter are then available to do so. In all such cases, if sufficient funds are not then available, Park Adopter will be notified of the need for additional funds, and Park Adopter may pay those funds in Park Adopter’s sole discretion. In any event, the City may remove all or any part of the Improvements for safety concerns.

D. Park Adopter’s use of the Improvements. Park Adopter will not have exclusive rights to the Park or to the Improvements. All use of the Improvements by Park Adopter must comply with applicable provisions of the Nichols Hills City Code, including the Park Rules set out in Article III, *Park Rules*, of Chapter 34, *Parks and Recreation*.

4. Liability for damage and release. The City makes no warranties, express or implied, as to the condition, safety, or fitness for a particular purpose of the Park. Park Adopter agrees that the City will in no way be liable to Park Adopter, and Park Adopter releases the City from liability for any injury to anyone associated with Park Adopter’s adoption of the Park or damage to or loss of its property resulting from Park Adopter’s adoption of the Park. Park Adopter assumes all such liability and indemnifies, saves, and holds harmless the City, its successors, assigns, and affiliated entities, for any and all claims, demands, damages, liability, actions, and causes or action of any nature or character whatsoever for property damage or injury or death to persons arising out of, pertaining to, or in any other way associated with Park Adopter’s adoption of the Park except to the extent such arise from the City’s negligent, unlawful or wrongful acts.

5. Entire Agreement; Modification. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter. All prior and contemporaneous written or oral agreements and communications between the parties are superseded by this Agreement. This Agreement may not be supplemented or modified except in a written agreement properly executed by the parties.

6. Waiver. The terms of this Agreement may be waived only by a written document executed and delivered by the waiving party to the other party. No course of dealing between the parties, delay in the exercise of any rights under this Agreement, or failure to object to any action or omission constitutes a waiver of any terms of this Agreement. A waiver of any term of this Agreement will not constitute a continuing waiver of that term.

7. Severability. If any provision of this Agreement is determined to be to any extent invalid, illegal, or unenforceable, it will be deemed stricken from this Agreement. All other provisions of this Agreement will remain in full force and effect. The stricken provision will then be deemed replaced with one that is valid and enforceable and that comes closest to expressing the parties' original intent.

[Remainder of page left blank – signature page follows]

Signature Page to Park Adoption Agreement

[Park Adopter Name(s)]

By: _____

Printed Name: _____

Title: _____

The City of Nichols Hills, Oklahoma

APPROVED by the City of Nichols Hills, Oklahoma this _____ day of _____, 20 ____.

ATTEST:

City Clerk

Mayor

REVIEWED for form and legality.

City Attorney