

Proposed Revisions to the Draft Management Agreement for Fair Park

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
1	1.02 Effective Date, Commencement Date, and Initial Term	Term of Agreement	Initial contract term too long, hampers city's ability to renegotiate unforeseen problems with contract.	Change term of contract from twenty-year contract with option for two five-year extension periods to a ten-year contract with option for one ten-year extension and two five-year extensions.
2	2.03 Transfer of Fair Park Personal Property	City conveyance of Fair Park Intellectual Property	In Section 2.03, the city conveys ownership of Fair Park Intellectual Property to Foundation. This is in conflict with Section 2.04, which grants the Foundation license and use of Fair Park Intellectual Property, but does not transfer ownership.	Remove "intellectual property" from the list of Fair Park Personal Property conveyed to Foundation in Section 2.03.
3	2.03 (e) Public Art Work	Foundation responsibility for maintenance and upkeep of Public Art Work	<p>Foundation is responsible for "all upkeep and maintenance" of Public Art Work, "subject to the Foundation's receipt of the full Management Fee."</p> <p>This is problematic because the Foundation is absolved of all responsibility to maintain public art if they receive one cent less than the full Management Fee.</p>	Add "proportional responsibility" language from Section 6.01 so that Foundation's responsibility does not dissolve, but becomes proportional to the City's payment of the Management Fee.
4	2.03 (e) Public Art Work	Restoration of Public Art Work	Although the City retains ownership of public artwork, Foundation is responsible for its maintenance, but not restoration. Also, Foundation may "remove" artwork.	City should retain ownership; Foundation should be responsible for maintenance <i>and</i> restoration. Foundation should not be able to remove artwork without Director's approval.
5	2.04 Fair Park Intellectual Property (d)	Fair Park Intellectual Property guidelines, standard of quality	The Foundation's use of Fair Park Intellectual Property has a low standard of compliance with City guidelines.	Strengthen compliance standard: change "be consistent" to "comply" and remove "use its best efforts to."

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
6	2.05 (b) Foundation Funding of Resident Institutions	Resident Institutions and City funding	<p>The Foundation has sole authority to disburse up to \$2M (or nothing at all) to Resident Institutions. Foundation has sole authority over which institutions get funds, and how much funding each receives, with no approval from the City.</p> <p>Elsewhere in the Agreement, the Foundation wants its Management Fee to increase with CPI, but its financial responsibilities to Resident Institutions do not increase in proportion.</p>	<p>Get clarification and discuss.</p> <p>If disbursements are included in this Agreement, they should be approved by the Director. Also, if Management Fee is indexed to CPI, Foundation's requirements to Resident Institutions should, as well.</p>
7	2.05 (b) Foundation Funding of Resident Institutions	Resident Institutions and City funding	Resident Institutions may not seek City funding if they receive money from Foundation. Why?	Get clarification and discuss.
8	2.05 (b) Foundation Funding of Resident Institutions	Proportional responsibility of funding Resident Institutions	The Foundation is absolved of all responsibility (which is at its sole discretion to begin with) to provide funding to Resident Institutions if Foundation receives one cent less than the full Management Fee.	Add "proportional responsibility" language from Section 6.01.
9	2.05 (c) Foundation's Obligation to Resident Institutions Subject to Appropriation	Foundation's assumption of City obligations with respect to Resident Institutions	What is purpose of this section?	Get clarification and discuss.
10	2.05 (e) Athletic Events	Payment obligations for Cotton Bowl Contracts	The Foundation "shall assume the City's payment obligations" only "provided the City appropriates the full Management Fee." The Foundation is absolved of all responsibility of payments if they receive one cent less than the full Management Fee.	Add "proportional responsibility" language from Section 6.01.

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
11	2.05 (g) State Fair of Texas Contract	Assignability of State Fair Contract	<p>This section assigns all City contracts to Foundation.</p> <p>However, unlike all other Fair Park contracts, State Fair's contract with City is not assignable without State Fair's consent.</p>	<p>Has State Fair agreed to contract re-assignment? What happens if State Fair refuses re-assignment?</p> <p>What is status of staff attempts to renegotiate State Fair contract with the City? Revisions to State Fair contract and must be completed and approved by the Park Board and City Council prior to approval of Fair Park Management Agreement.</p> <p>Does Section 4.14 require that any re-negotiation, extension, or renewal of the State Fair of Texas Contract must be approved by the City Council? Is City Council approval required for other leases of longer than one year?</p>
12	3.04 Bond Funds	Bond fund request amount, disbursement of funds	<p>The Agreement contemplates that the City shall seek \$75M in bond funds in the 2017 Bond Program. This has not yet been determined by the City Council and should not be a requirement of the Agreement.</p> <p>The Agreement provides that the \$75M in bond funds shall be disbursed in three bond "sales" of \$25M each, with the Foundation providing matching funds of \$25M for the second and third "sales."</p>	Clarify what happens in the event that the City allocates less than \$75M.
13	3.04 Bond Funds	Capital Needs Inventory	Identifies different types of Needs Inventory items to be funded by City and by Foundation.	Clarify and discuss.

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
14	3.04 Bond Funds	Capital Needs Inventory	Does not appear to require Capital Needs Inventory to be used as guiding document for expenditure of City bond funds. There is no mechanism for updating the Inventory by City.	Section must explicitly state that Bond funds will be disbursed in accordance with the Capital Needs Inventory. The Park Board shall have the authority to amend the Capital Needs Inventory, and any amendments to the Inventory proposed by the Foundation must receive Park Board approval.
15	4.02 Foundation Governance	Foundation Board member slots for “historic preservation” and “surrounding Fair Park community”	Allows outsiders to be appointed to Foundation Board to “represent” positions reserved for historic preservation and surrounding community members.	Make explicit that slots are reserved for persons actually <u>from</u> historic preservation and surrounding Fair Park community. Change “(A) persons representing” to “(A) persons from and representing.” Change “(B) persons representing” to “(B) persons from and representing.”
16	4.03 Performance Standards and Annual Report (a)	Performance Plan development	The Foundation’s Performance Plan must be developed prior to contract execution.	Foundation evaluation criteria and performance indicators must be decided by the Foundation and Park Board in advance of any agreement, and should be included as part of the Agreement.
17	4.03 Performance Standards and Annual Report (b)	Approval of annual performance plan	As currently drafted, the Management Agreement gives the Director the authority to approve the Foundation’s evaluation criteria will be. This should be the responsibility of the Park Board.	Replace “agreed upon by the Director and the Foundation” with “agreed upon by the Park Board and the Foundation.” Replace “The Plan will be updated periodically by the Foundation or as requested by the Director” with “The plan may be updated periodically subject to the agreement of the Foundation and Park Board.”

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
18	4.03 Performance Standards and Annual Report (b)	Performance standards	Does not include enumerated quality of life performance standards.	Include “adequate staffing and staff training” and “general cleanliness and an inviting environment” to performance indicators.
19	4.03 Performance Standards and Annual Report (d)	Remediation plan if Foundation fails to meet its performance goals	Neither the Park Board nor the Director has the authority to require the Foundation to implement a remediation plan if the Foundation fails to meet its performance goals. Further, the City has no authority over the contents of the remediation plan.	<p>Park Board or Director should be able to require a remediation plan if Foundation fails to meet its performance goals. The terms of remediation shall require Park Board approval.</p> <p>Add “or Park Board” between “Director” and “may.”</p> <p>Change “request” to “require.”</p> <p>Append “approved by the Park Board” to “implementation of a remediation plan.”</p>
20	4.13 (a) (v) Contracts Related to Fair Park Management; General Provisions	Insure and indemnify Park Board members	<p>This and many other sections insure/indemnify “the City and its officers and employees” from liability.</p> <p>Does this insure and indemnify Park Board members? Are Park Board members “city officers”?</p>	Make sure that Park Board members are “city officers” protected by this section, and, if not, add Park Board members to the list.
21	4.13 (a) Contracts Related to Fair Park Management; General Provisions	Competitive bidding	Unclear whether contracts must be competitively bid.	Add a clause requiring all contracts over a reasonable threshold of value to be competitively bid in accordance with established business practices.
22	4.13 (c) Additional Information	Foundation to provide contracts and other information to the City	Only Director, not Park Board members, may request documents from Foundation. This lacks transparency.	<p>Allow Park Board members, as well as Director, to independently request documents from the Foundation.</p> <p>Append “or Park Board member” to “requested by the Director.”</p>

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
23	4.13 (c) Additional Information	Confidential information	Allows Foundation to enter into “confidential agreements.” This lacks transparency.	Prohibit Foundation from entering into confidential agreements. Replace “endeavor and use reasonable efforts to minimize the instances of” with “not enter into.”
24	4.13 (d) Commercially Reasonable	Foundation staff salaries	There is no cap or other reasonable criteria for limiting staff salaries, which could become unreasonably exorbitant.	Prohibit exorbitant staff salaries and compensation. Add language to make sure that staff salaries do not rise above industry standards of commensurate non-profits.
25	4.14 Leases or Licenses	Resident Institution lease/license approval	Under this section, does a new contract for the State Fair have to be approved by the City Council? Does the Foundation have the unilateral authority to not renew the lease of Texas Discovery Gardens? The African American Museum? Etc.?	Need to ensure that changes to leases of Resident Institutions (or the addition of new Resident Institutions) shall be subject to the approval of the City Council or the Director.
26	4.15 Operating Hours; Special Events; Bookings	“Commercially reasonable” standard	Standards for public accessibility of Fair Park, such as operating hours and park regulations, are deemed “commercially reasonable.” Since city parks by their nature are not commercial entities, is it appropriate for this section to have that standard?	Get clarification and discuss.
27	4.17 Naming and Sponsorship (b) Approval	Morality clause	Park Board has the right to rename a corporate-sponsored facility if the corporation is linked to a felony. Can we broaden this to include scandal, malfeasance, etc.?	Add “malfeasance, or moral turpitude” (or legal equivalent for corporations) as reason to rename facility.

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
28	6.01 Regular Maintenance and Repair	Proportional responsibility if Management Fee is not fully authorized	<p>This section states “To the extent that funding is only partially provided, the Foundation shall be responsible for such maintenance and repair in proportion to the funds received from all sources.”</p> <p>Elsewhere in the Agreement, the Foundation abdicates all responsibility if the City pays one penny less than the full management fee. The language of Section 6.01 should be applied to all sections that are dependent on “the Foundation’s receipt of the full management fee.”</p>	Add “proportional responsibility” clause to all instances of “Subject to the Foundation’s receipt of the full Management Fee” throughout the entire Agreement so that Foundation is not absolved of all responsibility if City funds less than full amount.
29	6.01 Regular Maintenance and Repair	Period for compliance with regular maintenance and repairs	<p>The Foundation is required to provide regular maintenance and repair of Fair Park, and if it does not do so, it has a “reasonable period of time” to comply.</p> <p>The time period should be more specific so there is no debate about the meaning of “reasonable.”</p>	After “reasonable period of time,” insert “and in any event, no longer than 60 days.”
30	6.01 Regular Maintenance and Repair	“Funds received from all sources”	This section does not clarify what is meant by “funds received from all sources.” What other sources of funding, aside from the Management Fee, does this clause refer to?	Clarify other sources of funding.
31	6.01 Regular Maintenance and Repair	Qualified compliance with Agreement	<p>Foundation is only required to be “substantially” in compliance with the Agreement.</p> <p>Foundation should have to comply without qualification.</p>	Remove “substantially.”

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
32	6.02 Alterations	Qualified consistency	Any alterations or new construction are only required to “substantially” comply with the Fair Park Comprehensive Development Plan. Foundation should have to comply without qualification.	Remove “substantially.”
33	6.05 Review of Plans and Specifications for Alterations (a) Substantial Projects, (b) Construction Threshold Amount	Park Board approval of Substantial Projects above \$3M in hard construction costs	Director has authority to approve capital expenditures over \$500,000. Does not give Park Board any authority over large expenditures.	In addition to the Director’s approval for \$500,000 capital expenditures, any Alterations to Fair Park in excess of \$3,000,000 should be approved by the Park Board.
34	6.16 Community Park	Size of community park	Community park too small.	Increase acreage of park.
35	6.16 Community Park	Standards for community park	Agreement provides no timeline for park construction and no penalties if the Foundation fails to meet its obligations	Add community park development, with timelines for fundraising, design, and construction, as performance indicators to the Foundation’s performance plan. Delete “and the City acknowledges that the Foundation’s ability to construct this community park will be dependent on the ability to raise the necessary funding.”
36	*6.17 Parking Structures	Above ground parking structures	Above ground parking garages are not prohibited as directed by Park Board.	Add explicit prohibition of above ground parking structures on Fair Park property. If not in newly created Section 6.17, wherever appropriate.
37	7.01 Fair Park Revenues	Qualification of insufficient operating revenue	If Foundation does not secure sufficient funds for operating expenditures, it is not considered in default, but must make “reasonable efforts” to secure additional funds.	Delete “use reasonable efforts to.” If the Foundation cannot generate revenue sufficient to properly maintain and operate Fair Park (in addition to their Management Fee), it should be considered a Foundation Default in this Agreement, without qualification.

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
38	7.01 Fair Park Revenues	Revenue sharing with the Park Department	There is nothing in the Agreement to require the Foundation to share excess revenues that exceed operational expenses with the Park Department.	If the Foundation receives excess operating revenue in any fiscal year (not including fundraising), should the Management Fee charged to the City be reduced? Should a percentage of the excess funds be reinvested in neighborhood parks throughout the city?
39	8.01 Public Access to Fair Park	The Foundation's ability to remove parking spaces and lots	This section contains the clause "The City shall at all times provide access to Fair Park, and to currently existing parking for Fair Park located on City property, via public roads."	Does this prohibit the Foundation from removing "currently existing parking" now or in the future?
40	9.01 Budget, Records, and Financial Statements (b) Records	Foundation document retention guidelines	Document retention is limited to five years.	Add requirement that board meeting minutes, agendas, and recordings, as well as financial records, must be retained throughout the term of the Agreement.
41	9.03 Mission Safeguards	Bylaw amendments	Only two Bylaws sections require Director approval to be amended. This requirement should be applied to all sections of the Bylaws.	Delete "the purpose provisions and dissolution and distribution provisions of." The Director should approve all amendments to the Foundation's Bylaws, not just the purpose and dissolution provisions.
42	9.04 Public Transparency	Open meetings provisions	Foundation is only subject to the Texas Public Information Act. For greater transparency, the Foundation should also be subject to the Texas Open Meetings Act and Freedom of Information Act.	Add that Foundation is subject to the Texas Open Meetings Act and Freedom of Information Act.

No.	Section	Issue	Problem with Current Draft	Proposed Change/Questions
43	11.03 Major Casualty Loss	Foundation's financial responsibility for restoration / reconstruction	Unclear whether Foundation alone is financially responsible for restoration / reconstruction in event of major casualty loss.	Clarification that Foundation is financially responsible for restoration / reconstruction. Append "at its sole cost and expense" to "restore and reconstruct such building(s) or other structure(s)."
44	12.03 Partial Taking	Clarify financial responsibility	Unclear whether Foundation alone is financially responsible in the event of partial taking.	Append "at its sole cost and expense" to "to an operational whole."
45	13.01 Defaults by Foundation (ii)	Extension of cure period	Currently, only the "parties" must approve any extension of the cure period for Foundation Defaults.	The Park Board should also have to approve any extension of the cure period for Foundation Defaults. Add "and approved by the Park Board" to "by the parties."
46	13.05 Annual Appropriations and Bond Funding	Clarification of termination due to Non-Appropriation Event	Although the Agreement allows either party to terminate the Agreement if there is a "non-appropriation event," it should be clarified that in the event of termination, the terminating party will not be penalized or bear any liability for termination.	Neither the City nor the Foundation should be penalized for lack of appropriation of full Management Fee or failure of Bond Package to be placed on the ballot or for it being voted down. Add "with no penalty for either party" between "terminate this Agreement" and "effective not less."
47	13.09 Reversion and Re-conveyance (c) Turnover	Distribution of remaining assets	In the event that the Foundation ceases to operate, its assets may be distributed to either the City or to another non-profit. It is unclear whether the City or the Foundation decides how the assets are to be distributed. Because Fair Park is a City asset, the City should decide how the assets are distributed.	Append "at the City's sole discretion" to "benefit of Fair Park."