

OPERATIONS, MAINTENANCE, AND PROGRAMMING AGREEMENT:

UNCOMMON GROUND SCULPTURE PARK

by and between

THE UNCOMMON GROUND SCULPTURE PARK, INC., AN OKLAHOMA NONPROFIT CORPORATION, THE PARK CONSERVANCY TRUST, AN OKLAHOMA PUBLIC TRUST, SCULPTURE PARK OPERATIONS, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, THE CITY OF EDMOND, OKLAHOMA, AN OKLAHOMA MUNICIPAL CORPORATION, AND THE EDMOND PUBLIC WORKS AUTHORITY, AN OKLAHOMA PUBLIC TRUST.

June _____, 2024

Exhibit A: Legal Description – Sculpture Park
Exhibit B: Estimated Budget

OPERATIONS, MAINTENANCE, AND PROGRAMMING AGREEMENT:
UNCOMMON GROUND SCULPTURE PARK

This OPERATIONS, MAINTENANCE, AND PROGRAMMING AGREEMENT (this "Agreement") is entered as of June ___, 2024, by and between The Uncommon Ground Sculpture Park, Inc., an Oklahoma nonprofit corporation (the "Donor"), The Park Conservancy Trust, an Oklahoma public trust ("Owner" or "Conservancy"), Sculpture Park Operations, LLC, an Oklahoma limited liability company ("Manager"), the City of Edmond, Oklahoma, an Oklahoma municipal corporation ("City") and the Edmond Public Works Authority, an Oklahoma public trust ("EPWA") to be effective as of the date of satisfaction of the last of all Conditions Precedent outlined herein ("Effective Date"). The Donor, Owner, Manager, City, and EPWA are sometimes collectively referred to herein as the "Parties." Capitalized terms not otherwise defined in this Agreement shall have the meaning set forth in the Development Agreement.

RECITALS

WHEREAS, Donor holds title to certain real estate, more particularly described in Exhibit "A" attached hereto and made a part hereof, along with improvements thereon, collectively hereinafter referred to as the Sculpture Park; and

WHEREAS, Owner, City, EPWA, and Donor, along with Edmond Fine Arts Institute (a nonparty to this Agreement), are parties to that certain Development and Funding Assistance Agreement: Uncommon Ground Sculpture Park ("Development Agreement") dated May 28, 2024; and

WHEREAS, EPWA and Donor are parties to that certain Loan and Security Agreement: Uncommon Ground Sculpture Park ("Loan Agreement") dated May 28, 2024; and

WHEREAS, pursuant to the Development Agreement and Loan Agreement, Donor may opt to donate the Sculpture Park to Owner upon Completion of Construction and establishment of an endowment fund ("Park Endowment") for the purpose of supporting the continued operation, maintenance, and benefit of the Sculpture Park; and

WHEREAS, Manager is engaged in the business of operating, maintaining, and programming public recreational, sculpture parks and park properties; and

WHEREAS, the Parties desire to enter into an agreement under which Manager will operate, maintain, program, and manage the Sculpture Park on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, mutual covenants, and agreements contained herein, it is mutually agreed by and between the Parties as follows:

I. RELATIONSHIP OF OWNER AND MANAGER.

- A. Upon Completion of Construction of the Sculpture Park and satisfaction of the Conditions Precedent contained herein, and pursuant to the terms of the Development Agreement and conveyance of the Sculpture Park to Owner by Donor, Owner desires to contract with Manager for the purpose providing services to operate, maintain, program, and manage the Sculpture Park and to furnish other services and support to the Owner, as hereinafter provided. Manager shall, at all times, be independent of Owner. All of the functions, duties, and services performed by the Manager under this Agreement shall be performed by the Manager as an independent contractor and not as an agent of the Owner except to the limited extent, if any, set forth in this Agreement. The Manager does not have the authority to act as agent of the Owner, and the Manager, in its capacity as such, do not have the authority to bind the Owner or its assets. The Owner does not have liability for the acts of the Manager which are not authorized under this Agreement. Manager shall, subject to the limitations herein, have full power and authority to select the means, method and manner of performing the obligations herein assumed, in order to achieve satisfactory operation, management, and maintenance of the Property.

II. CONDITIONS PRECEDENT.

- A. The Parties' respective obligations under this Agreement shall not be effective until satisfaction of all Conditions Precedent contained in this Section II. If any of these Conditions Precedent are not satisfied or are waived in writing by the Parties' duly authorized representative, this Agreement shall be of no further force and effect, and none of the Parties hereto shall have any obligation or liability hereunder. Conditions Precedent to effectiveness of this Agreement are:
1. Donor has established the Park Endowment; and
 2. Donor has provided to Owner and City evidence which demonstrates that the Park Endowment has funds sufficient to pay for all costs not included in Owner's Maximum Cost as defined in Section VII(A) of this Agreement; and
 3. All conditions precedent required pursuant to Section 11 of the Development Agreement have been satisfied; and
 4. Within thirty (30) days of the Completion Date, Donor has notified City in writing of its intent donate the Sculpture Park to Owner in accordance with Section 5.4 of the Development Agreement and applicable provisions of the Loan Documents; and
 5. Sculpture Park has been conveyed to Owner pursuant to the Development Agreement and Loan Documents.

III. TERM OF AGREEMENT; TERMINATION OF RIGHTS.

- A. The first term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until June 30th of the same fiscal year ("Initial Term"). Each term subsequent to the Initial Term shall be referred to as a "Renewal Term". Upon the expiration of the Initial Term, this Agreement shall be automatically renewed, subject to approval of the City and the Owner and lawful budget appropriation as necessary by the City. Each Renewal Term shall run concurrently with the City's fiscal year. Notwithstanding the forgoing, any Party may, with or without cause, terminate this Agreement by providing ninety (90) days prior written notice in accordance with Section XI of this Agreement.

- B. Upon termination of this Agreement by any Party, (i) the Parties hereto shall account to the others with respect to all matters outstanding, including any revenues collected; (ii) Manager's right to possession of the Sculpture Park immediately cease and Manager shall then deliver to Owner all revenues then in Manager's possession, if any; (iii) Manager shall deliver to Owner as received any revenues due Owner under this Agreement but received by Manager after such termination, if any; and (iv) Manager shall deliver to Owner all materials and supplies, keys, contracts and documents, copies of such other papers and records pertaining to the Property in Manager's possession, custody, or control.

IV. **OBLIGATIONS OF MANAGER.**

Manager covenants and agrees to:

- A. **GOOD FAITH.** At all times and in good faith protect and preserve the title and interest of Owner with respect to the Sculpture Park and other assets owned by Owner and City, including any City-owned public art, and generally do or cause to be done all things necessary, required, or desirable to insure the proper and efficient maintenance and operation of the Sculpture Park.

Keep the Sculpture Park clean and in good repair at all times, and order and supervise the completion of such alterations, decorations, and repairs as may be required from time to time.

Provide, supply, and render such operations and management services as are necessary to provide service to Owner, including, but not limited to, those operations and management services more specifically set forth herein.

- B. **INSURANCE.** Procure and maintain throughout the duration of this Agreement insurance coverage required pursuant to Section VIII of this Agreement.
- C. **PERMITS.** Accept full responsibility to apply for, obtain, and maintain all licenses and permits which may be required, and to comply with all laws and regulations of all applicable governmental authorities.
- D. **PROGRAMMING.** Provide park programming to include: marketing and advertising, movie nights, concerts, ticketed shows, seasonal tree lighting, guided tours of the Sculpture Park in coordination with Owner's Director of Public Art, and generally do or cause to be done all things necessary, required, or desirable to insure the proper and efficient programming of the Property as specified by the Manager and/or Owner.
- E. **OPERATIONS.** Provide operations services to include: oversight and staffing of park events including security, coordination with maintenance services, vendor coordination, volunteer coordination, visitor relations and communications, marketing of park events, and generally do or cause to be done all things necessary, required, or desirable to insure the proper and efficient operations of the Sculpture Park as specified by the Manager and/or Owner.

1. Employees, Staffing, and Related Services.

- a. Retain or employ and coordinate the services of all employees, supervisors, engineers, accountants, security service, and other persons necessary or appropriate for management and operation of the Sculpture Park
- b. Hire employees to fill the following roles:
 - 1) Park Manager: Oversee park events, manage maintenance, act as park liaison, help develop park programs, assist in marketing park and park events.
 - 2) Park and Facilities and Maintenance Staff: Manage overall maintenance of the Sculpture Park, make general repairs, hire contractors, oversee landscaping projects.
 - 3) Event and Rental Coordinator: Schedule facility rentals, give Sculpture Park tours, prepare event contracts, oversee private and public events, book birthday parties and other events, maintain event schedule.
- c. Provide employees with the proper number of staff and equipment to perform Sculpture Park operations identified in this Agreement. Adequate personnel must be provided to meet safety requirements at all times.
- d. Parties acknowledge that certain duties and responsibilities related to operation of the Sculpture Park will necessitate after hours call out and/or weekend work. Manager will provide employees available for work outside of normal business hours.

F. MAINTENANCE. Provide maintenance services for the Sculpture Park to include those maintenance services specified in this Section IV and generally do or cause to be done all things necessary, required, or desirable to insure the proper and efficient maintenance of the Sculpture Park as specified by the Manager and/or Owner.

1. Employees, Staffing, and Related Services.

- a. Provide crew(s) with the proper number of staff and equipment to perform maintenance services identified in this Agreement and as assigned in work orders. Adequate personnel must be provided to meet safety requirements at all times.
 - b. Parties acknowledge that certain duties and responsibilities related to maintenance of the Sculpture Park will necessitate after hours call out and/or weekend work.
- 2. Equipment.** Provide equipment and vehicles necessary to complete the tasks described herein and within the timeframes specified. Maintain equipment to meet clean and professional conditions reflecting the Owner's high standards.
- 3. Preventive.** Perform preventive measures to avoid maintenance issues that could become a hazard to Sculpture Park patrons and result in unnecessary costs. These items include but are not limited to:
- a. Winterizing restrooms, water fountains, faucets and irrigation systems;
 - b. Painting and sanding wood structures on benches, bridges and playgrounds; and
 - c. Cleaning and clearing gutter, drains, and pipes.
- 4. Routine Inspection.** Visually inspect all areas of the Sculpture Park at least once daily, Monday through Sunday. Evaluate site conditions and identify potential maintenance needs or safety hazards which require immediate attention. Adjustments to the daily schedule

shall be made based on the findings of these inspections and Manager will cause maintenance services to be performed accordingly.

5. Repairs.

- a. Identify, prioritize and perform needed repairs as identified during routine inspection of the Sculpture Park.
- b. Problem areas identified through routine inspections of Sculpture Park grounds, biannual inspections of facilities and grounds, and emergency reports by Manager and Sculpture Park patrons will be reported to Owner, or its designee, who will follow up and schedule repairs as needed.
- c. Immediately restore missing or broken equipment or Sculpture Park furniture to a safe condition. If permanent repairs are not immediately possible, take immediate measures to restrict access to the equipment site and to adequately warn park patrons of the hazardous situation. This may include securing the area for safety reasons, removing the object or placing a barrier around the area to prevent possible public access.
- d. Install, repair or replace signs stating “No Skateboarding”, “No Dumping”, “No Loitering”, “Remove All Pet Waste” and “Keep All Pets on a Leash” as required.
- e. Move, remove, and install fences, picnic tables, tables, chairs, benches, etc. as required.

6. Litter, Debris, and Trash Removal.

- a. Routinely inspect all areas of the Sculpture Park, including playground, pavilion rental areas, and dog park, for ground litter, debris, and trash.
- b. Remove ground litter, debris, and trash as often as needed to keep the Sculpture Park grounds free of the same.
- c. On a daily basis unless otherwise indicated herein, blow off all leaves, excessive dirt, or other debris from all areas of the Sculpture Park.
- d. Remove and replace trash liners daily regardless of how much or how little the containers are filled.
- e. Empty trash containers when they are more than half filled or are attracting bees and insects at the time of inspections or when Sculpture Park usage indicates that containers may be filled to capacity before the next scheduled inspection.
- f. Check trash from all containers daily and collect and deposit trash in the roll-off three days per week. Install new plastic bags in all trash containers as required.

7. Graffiti Removal, Vandalism.

- a. Remove, clean, or paint over graffiti as soon as practicable after notice of the same, preferably within 24 – 48 hours from the time it is identified.
- b. Report to Owner, or its designee, graffiti which cannot be easily removed or painted over.
- c. Take pictures of graffiti for documentation.
- d. Secure any vandalized area that is creating a public safety hazard immediately upon identification. This may include securing the areas for safety reasons, removing the object or placing a barrier around the area to prevent possible public access.

e. Document and report all vandalism to the Owner or its designee.

8. Playground Inspection and Repair.

a. Rake and remove debris from playground as needed, at least weekly.

b. Complete playground inspection monthly. Playground inspection will include:

- 1) Check proper movement and possible wear of all dynamic elements and lubricate as needed;
- 2) Inspect all nuts and bolts and tighten as needed;
- 3) Inspect all pins, clamps, s-hooks and parts to ensure that they are securely attached in the proper locations and adjust as needed;
- 4) Inspect for pinch points, rough edges and cracks of plastic, metal or wood surfaces and adjust as needed;
- 5) Inspect all posts, handles, decks and play components for protruding objects that could result in injury and adjust as needed;
- 6) Inspect all fall areas for proper depth and hard rake to fill in low areas; and
- 7) Inspect the playground and immediate areas for broken glass, trash and debris and remove debris as needed.

c. Add sand to playground and sand volleyball courts twice per year as needed.

d. Add mulch to playground as needed.

e. Sand wood rails as needed.

f. Clean wood and seal as needed.

g. Paint playground metal structures as needed.

9. Pavilions.

a. Clean prior to any scheduled rental.

b. Inspect after each rental period for additional cleaning or repairs as needed.

c. Blow roofs to remove leaves and debris twice per year.

d. Conduct pavilion inspections of area and structures annually.

10. Sidewalks and Trails.

a. Inspect all sidewalks and trails Monday through Sunday for cleanliness and safety, and report any areas of concern.

b. Prune low-hanging limbs to eliminate potential hazards.

c. Immediately remove fallen limbs, debris, and other trip hazards.

d. Remove dead trees that could fall on the trail.

e. Repair trail surface as needed.

11. Restrooms.

a. Inspect and clean all restrooms by 10:00 AM at least once daily or as often as needed based on Sculpture Park usage.

b. Restroom cleaning includes, but is not limited to, removing all ground litter and debris, sweeping and mopping floors, scrubbing toilets, sinks and urinals with disinfecting cleaner, and refilling toilet paper and paper towels as needed.

c. Wash and scrub restroom floors and walls at least once monthly.

- d. Paint restrooms as needed.

12. Indoor Facilities.

- a. Pressure wash floors and walls monthly or more often as needed.
- b. Replace and repair fixtures as needed.
- c. Strip and wax floor twice annually.
- d. Inspect and repair exterior building lights.
- e. Inspect exterior of buildings and paint when necessary.
- f. Perform annual inspection and certification of all fire extinguisher units.
- g. Through a state licensed contractor, treat each building with EPA approved pesticides in accordance with best management practice.
- h. Clean gutters and drains around buildings as needed.

13. Parking Lot.

- a. Inspect lots yearly to determine if marking of spaces, fire lanes and other markings are visible and make recommendations for repairs.
- b. Check parking lot lights twice per year and make recommendations for repairs.
- c. Replenish gravel lots with material as needed.

14. Dog Park.

- a. Daily remove litter, animal waste and trash.
- b. Daily inspect area for trip hazards and washouts.
- c. Daily inspect drains and remove any debris.
- d. Daily inspect and clean splash pad filter.
- e. Daily inspect fencing and repair as needed.
- f. Replenish waste bags as needed.
- g. Fill in holes in fenced dog play area as needed.
- h. Remove dead trees and limbs as needed.
- i. Aerate and over seed grass in the winter.

15. Landscape and Turf.

- a. During the growing season (April 1 through October 31):
 - 1) Mow all common turf areas on a weekly basis at the proper levels for each type of turf.
 - 2) Mow all turf fields to a height of 1-2 inches twice per week, preferably on Monday and Friday.
 - 3) String trim all posts, benches, tables, trash containers, fence lines, tree, grills and buildings as part of the mowing operation.
 - 4) Remove grass clippings from turf fields when visible.
- b. During the off-season (November 1 through March 31):
 - 1) Mow all common turf areas once every four weeks at the proper levels for each type of turf.
 - 2) Mow all turf fields to a height of 1-2 inches once weekly.
 - 3) String trim all posts, benches, tables, trash containers, fence lines, tree, grills and buildings as part of the mowing operation.
 - 4) Remove grass clippings from turf fields when visible.

- 5) Blow hard surfaces to remove debris.
- 6) Trim and edge, remove debris (sticks and limbs) and provide weed control outside normal turf areas to prevent encroachment.
- 7) Maintain embankments as needed, prune plants and tree limbs up to 14 feet in height and less than 2.5 inches in caliper, and pick up and dispose of trash.

16. Edging Curbs, Sidewalks, and Pavilions. Edge all curbs, sidewalks and pavilions once per week between April 1 through October 31 and as needed for the rest of the year. Remove all grass clippings and debris from the curbs and sidewalk areas after each edging.

17. Herbicide Use.

- a. Post areas after spraying to warn patrons.
- b. Store herbicides in OSHA approved containers.
- c. Wear appropriate protective clothing while applying.
- d. Use non-selective herbicides, such as Round-Up, to kill grass and weeds that are growing in cracks, around posts, around trees, along fence lines, along curb and gutters, or in other identified areas where no vegetation is desired.
- e. Use pre-emergent herbicides to control the germination and spread of broadleaf weeds in plant beds and turf areas.
- f. Use post-emergent herbicides to control emergent broadleaf weeds that are currently in plant beds or turf areas.

18. Sodding.

- a. Sod bare spots in areas which are located on steep slopes, in drainage areas, on turf fields as needed. Sprig or over seed and add hay to other areas as needed.
- b. Ensure the soil is slightly moist when sod is transplanted.
- c. Add starter fertilizer at a rate of one pound of nitrogen per 1000 square feet of area.
- d. Irrigate the new sod frequently enough so that the underlying soil is always moist, but do not saturate.
- e. Spot sod areas as required.

19. Irrigation System Management / Maintenance.

- a. Test irrigation system before watering season begins. Test each zone for operation, water pressure, head damage, broken lines, etc.
- b. Monitor, maintain, and repair the irrigation system as needed.
- c. Shut off the irrigation system no later than November 15th of each year, shut off the water at the meter and open existing drains and drain the system.

20. Flower Bed Maintenance.

- a. Place pine straw/mulch in landscape islands and around the base of trees planted in turf to a minimum of two foot radius from the tree.
- b. Mulch shall not contact / cover the tree trunk. A mulch free area of 6 inches wide at the base of the tree shall be provided to avoid disease and decay. Mulching in shrub and flower beds should be 3 -6 inches deep and contained within the border of the bed.
- c. Replace pine straw / mulch twice per year in depleted areas.

- d. Perform weed control in shrub and flower beds as required from February through October.
- e. Remove weeds in excess of 4 inches by pulling or cultivating immediately.
- f. Restrict use of herbicides to park areas that are environmentally sensitive, such as Autry Mill Nature Preserve.

21. Pruning.

- a. Prune to remove hazardous, broken, diseased or deadwood from a tree or shrub and/or rejuvenate the shape of the plant.
- b. Remove diseased or dead trees immediately for disease control and to prevent safety hazards
- c. Replace dead plants as needed.
- d. Prune trees and shrubs once per year or as needed.
- e. Prune trees and shrubs located near parking spaces yearly or as needed to avoid safety hazards.
- f. Spray or hand pull weeds in parking lot area as needed.

22. Huntwick Detention Pond. Mow and perform routine maintenance on Huntwick Detention Pond.

V. OBLIGATIONS OF OWNER AND CITY/EPWA.

Owner and City/EPWA covenant and agree to:

- A. GOOD FAITH.** At all times and in good faith perform the duties and obligations as described herein.
- B. INSURANCE.** Procure and maintain throughout the duration of this Agreement insurance coverage required pursuant to Section VIII of this Agreement.
- C. Utility Services.** City/EPWA shall provide Water, Sanitary Sewer, Sanitation and Electric service to the Sculpture Park at no cost to Owner. In the event it is determined this provision conflicts with other contractual obligations of City/EPWA, the obligation to provide utility services to Owner at no cost shall cease and become of no force or effect.
- D. Huntwick Detention Pond.** City/EPWA shall be responsible for any major repairs, upgrades, or overhaul to the Huntwick Detention Pond which may be necessary or required after Completion Date.

VI. GENERAL AND ADMINISTRATIVE ACTIVITIES.

- A. Reports.** Manager shall furnish to Owner such reports regarding the management, operation, programming, and maintenance of the Sculpture Park as Owner and/or City/EPWA may reasonably request.

- B. Invoices.** Manager shall submit invoices, statements, receipts, etc. to Owner on a regular basis, no less than quarterly, so all amounts owed to Manager, subcontractors and vendors may be paid promptly, to include payment for all supplies, merchandise, materials, labor, insurance or other items ordered, furnished or used by Manager in the performance of the obligations assumed hereunder. Owner shall share with City/EPWA all records received pursuant to this subsection.
- C. Prior Approval.** Manager shall secure Owner's prior written approval in advance for all expenditures in excess of \$100,000.00 for any one item or expense, with the exception of monthly or recurring maintenance, operation, or programming charges, or other regularly budgeted expenses, or any repairs and maintenance necessitated as a result of an emergency as defined in the City's Code of Ordinances.
- D. Records.** Manager shall maintain records, in a manner consistent with the City's Record Retention Policy, for all supplies, tools, and equipment purchased hereunder by Owner for use in the management, operation, and maintenance of the Sculpture Park. Such supplies, tools, and equipment shall remain the property of the Owner and shall be used only in connection with the Sculpture.
- E. Fiscal Year Limitations.** Throughout the duration of this Agreement and for purposes of this multi-year understanding, it is acknowledged and understood by all Parties that financial obligations intended to be undertaken by the City are subject to Constitutional and legal limitations.

VII. COMPENSATION.

- A. Approved Budget, Compensation.** During the Initial Term, the estimated budget for the services to be provided by the Manager is set forth on Exhibit B ("Budget Estimate"). No later than ninety (90) days prior to the end of the Initial Term or any Renewal Term, Manager shall provide to Owner and City a budget for services of the estimated costs related to operations, maintenance, and programming of the Sculpture Park which are anticipated to be incurred in the following fiscal year ("Approved Budget").

With the exception of the first payment of the Initial Term, Owner shall pay to Manager a quarterly payment as compensation for the operation, maintenance, and programming services provided pursuant to this Agreement. Each quarterly payment shall be in an amount equal to twenty five percent (25%) of Owner's seventy percent (70%) of the Approved Budget.

The first payment of the Initial Term shall be due and payable within twenty one (21) days of the Effective Date and shall be prorated, calculated beginning on the Effective Date, on the basis of a 360 day year and thirty (30) day months. Each succeeding payment, during the Initial Term and any Renewal Terms, shall be due and payable on the first day of each succeeding quarter of the Owner's fiscal year.

The City/EPWA, by way of budget appropriation to Owner, shall be responsible for payment of seventy percent (70%) of the Approved Budget and the Donor, through the Park Endowment, shall provide funds equal to thirty percent (30%) of the Approved Budget.

Notwithstanding anything to the contrary in this Agreement, Owner's responsibility for the compensation for Manager's services during the Initial Term or any Renewal Term shall not exceed \$899,360.00 ("Maximum Cost"). All costs in excess of the Maximum Cost shall be paid by the Donor through the Park Endowment. Owner shall invoice the City/EPWA quarterly for all expenses due under this Agreement to be paid within thirty (30) days of receipt of invoice.

- B. Expenses.** During the term of this Agreement and any extension and subject to any limitations imposed by law and the terms contained herein, Owner shall reimburse Manager for all reasonable, necessary and verifiable out-of-pocket business and travel expenses incurred by it in the performance of its duties and responsibilities hereunder, subject to Owner's policies and procedures for expense verification and documentation. Provided, the cost of any expenses shall be included in the Maximum Cost.

VIII. INSURANCE.

- A. General Liability Insurance.** Owner shall procure Commercial General Liability Insurance in an amount of One Million Dollars (\$1,000,000) per occurrence covering public liability risk relative to the Sculpture Park and agrees to name Manager as an Additional Insured.
- B. Property Insurance.** Owner shall procure insurance covering the Sculpture Park for such perils and limits as Owner deems appropriate.
- C. Workers Compensation and Employers Liability Insurance.** Manager shall maintain statutory workers compensation insurance and Employers Liability Insurance with a per occurrence limit of at least One Million Dollars (\$1,000,000).
- D. Certificates of Insurance.** Owner and Manager agree to provide certificates of insurance to each other evidencing the insurance referred to herein prior to undertaking the Parties' respective obligations outlined in this Agreement.

IX. INDEMNIFICATION.

- A.** Manager shall indemnify, defend and hold harmless Owner and its affiliates, their respective officers, directors, employees, and agents, against and in respect of any and all losses, claims, damages, causes of action, actions, obligations, liabilities, deficiencies, suits, proceedings, actual out-of-pocket obligations and expenses (including cost of investigation, interest, penalties and reasonable attorneys' fees) (collectively, "Losses") arising out of or due to the operation of the Property by Manager, its affiliates, agents, servants and/or employees. The obligations set forth in this Section(A) shall survive for a period of one (1) year following the last day of the Initial Term or any Renewal Term of this Agreement.

B. Manager will give Owner the benefit of its best judgment and efforts in rendering the services required pursuant to this Agreement. Manager shall be liable for its willful malfeasance, bad faith, and negligence in the conduct of its duties. Owner shall indemnify, defend and hold harmless Manager and its affiliates, respective shareholders, officers, directors, employees, and agents, against and in respect of any and all Losses arising out of or due to the operation of the Sculpture Park by Owner, its affiliates, agents, servants and/or employees prior to the commencement of the term of this Agreement, however no such right of indemnity shall exist with respect to any liabilities, claims, damages, costs or expenses which may be incurred by Manager by reason of its willful malfeasance, bad faith, or negligence in the conduct of its duties. The provisions of this Section 9(B) shall survive the termination of this Agreement, but this shall not be construed to mean that the Owner's liabilities or obligations hereunder survive as to the other provisions of this Agreement.

C. If a Party entitled to indemnification (the "Indemnitee") receives notice of any claim or the commencement of any action or proceeding with respect to which a party is obligated to provide indemnification (the "Indemnifying Party") pursuant to subsections (A) and (B) of this Section, the Indemnitee shall promptly give the Indemnifying Party notice thereof (Indemnification Notice"). Such Indemnification Notice shall be a condition precedent to any liability of the Indemnifying Party under the provisions for indemnification contained in this Agreement. Except as provided below, the Indemnifying Party may compromise, settle or defend, at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, any such matter involving the asserted liability of the Indemnitee. In any event, the Indemnitee, the Indemnifying Party and the Indemnifying Party's counsel shall cooperate in the compromise of, or defense against, any such asserted liability. If the Indemnifying Party provides the Indemnitee a defense to a third-party claim at the Indemnifying Party's cost with a qualified attorney, Indemnitee may participate and/or monitor the defense with an attorney of the Indemnitee's selection (at the Indemnitee's own expense). Provided that the Indemnifying Party pays for the full cost of the settlement of any claim, the Indemnifying Party may settle any claim without the consent of the Indemnitee. If the Indemnifying Party chooses to defend any claim, the Indemnitee shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense.

X. **OKLAHOMA GOVERNMENTAL TORT CLAIMS ACT.** Owner's obligations under this Agreement with respect to insurance, indemnity and liability are subject to and shall not constitute a waiver of the protection or limits of liability under the Oklahoma Governmental Tort Claims Act, Title 51 Oklahoma Statutes, Section 150, *et seq.*

XI. **NOTICES.** Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

In the case of Donor:
Uncommon Ground Sculpture Park, Inc
209 French Park Place
Edmond, OK 73034
Attn: Hal French

With a copy to:
Rubenstein & Pitts, PLLC
1503 East 19th Street
Edmond, OK 73013
Attn: Todd A. McKinnis

In the case of Manager:
Sculpture Park Operations, LLC
209 French Park Place
Edmond, OK 73034
Attn: Hal French

With a copy to:
Rubenstein & Pitts, PLLC
1503 East 19th Street
Edmond, OK 73013
Attn: Todd A. McKinnis

In the case of Conservancy:
The Park Conservancy Trust
PO Box 1218
Edmond, OK 73083
Attn: Cinda Covell

With a copy to:
City of Edmond
P.O. Box 2970
Edmond, OK 73083
Attn: City Attorney

In the case of City and/or EPWA:
City of Edmond
P.O. Box 2970
Edmond, OK 73083
Attn: City Manager

With a copy to:
City of Edmond
P.O. Box 2970
Edmond, OK 73083
Attn: City Attorney

or to such other address, within the United States, with respect to a Party as that Party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a Party under this Agreement to any other Party under this Section shall be given to each other Party to this Agreement.

XII. ADDITIONAL PROVISIONS.

- A. Choice of Law.** This Agreement is made and executed in Oklahoma County, Oklahoma and shall be subject to, and interpreted by and in accordance with, the laws (excluding conflict of law provisions) of the State of Oklahoma.
- B. Entire Agreement.** This Agreement is the entire Agreement of the Parties respecting the subject matter hereof. There are no other agreements, representations, or warranties, whether oral or written, respecting the subject matter hereof.
- C. Interpretation.** This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the Parties hereto and shall not be interpreted strictly for or against any Party, but solely in accordance with the fair meaning of the provisions hereof to effectuate the purposes and intent of this Agreement.
- D. Representations and Warranties.** Each Party hereto has entered into this Agreement based solely upon the agreements, representations and warranties expressly set forth herein and upon its own knowledge and investigation. No Party has relied upon any representation or warranty of any other Party hereto except any such representations or warranties as are expressly set forth herein.

- E. No Third Party Beneficiary.** This is not a third-party beneficiary contract. No person or entity other than a Party signing this Agreement shall have any rights under this Agreement.
- F. Waiver.** A Party to this Agreement may decide or fail to require full or timely performance of any obligation arising under this Agreement. The decision or failure of a Party hereto to require full or timely performance of any obligation arising under this Agreement (whether on a single occasion or on multiple occasions) shall not be deemed a waiver of any such obligation. No such decisions or failures shall give rise to any claim of estoppel, laches, course of dealing, amendment of this Agreement by course of dealing, or other defense of any nature to any obligation arising hereunder.
- G. Time is of the Essence.** Time is of the essence with respect to each obligation arising under this Agreement. The failure to timely perform an obligation arising hereunder shall be deemed a failure to perform the obligation.
- H. No Fiduciary Duty.** The rights, obligations, duties and covenants contained in this Agreement do not create a fiduciary duty. The Parties hereby expressly disclaim any fiduciary obligation, whether express or implied, arising out of, without limitation, the negotiation, execution, delivery, performance, non-performance, and/or breach of the obligations imposed by this Agreement.
- I. Assignment.** Except as otherwise stated herein, Manager may not sell, assign, pledge, transfer or convey any interest in this Agreement without the prior written consent of both Owner and City.
- J. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement shall become effective only when all Parties hereto have executed the original or counterpart hereof. This Agreement may be executed and delivered by a facsimile or digitized transmission of a counterpart signature page hereof.
- K. Amendments.** This Agreement may be amended or modified only in a writing which has been signed by all Parties hereto and which specifically references this Agreement.
- L. No Partnership or Joint Venture.** Nothing in this Agreement shall be construed to create a partnership or joint venture, nor to authorize either party hereto to act as agent for or representative of the other party hereto. Each party hereto shall be deemed an independent contractor, and no party hereto shall act as, or hold itself out as acting as, agent for another party hereto.
- M. Severability.** In the event any provision of this Agreement, or the application of such provision to any person or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent for any reason, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected and shall continue to be enforceable to the fullest extent permitted by law.

- N. Venue.** Any cause of action for a breach or enforcement of, or a declaratory judgment respecting, this Agreement shall be commenced and maintained only in the United States District Court for Western District of Oklahoma or the applicable Oklahoma state trial court sitting in Oklahoma City, Oklahoma and having subject matter jurisdiction.
- O. Attorney's Fees.** In any action brought by a party hereto to enforce the obligations of the other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and attorney's fees and expenses (including court costs, reasonable fees of accountants and experts, and other expenses incidental to the litigation).
- P. Authority.** Each of the persons signing below on behalf of a Party hereto represents and warrants that he or she has full requisite power and authority to execute and deliver this Agreement on behalf of the Party for whom he or she is signing and to bind such Party to the terms and conditions of this Agreement.
- Q. Captions.** Any headings preceding the text of the sections and paragraphs hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meanings, construction or effect.
- R. Capitalized Terms.** Capitalized Terms shall have the meaning as defined herein. Capitalized terms not defined herein shall have the meaning provided for in the Development Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

DONOR: **Uncommon Ground Sculpture Park, Inc.,**
an Oklahoma nonprofit corporation

BY: _____
Hal French, President

OWNER: **The Park Conservancy Trust,**
an Oklahoma public trust

BY: _____
Randel Shadid, Chairman

MANAGER: **Sculpture Park Operations, LLC,**
an Oklahoma limited liability company

BY: _____
Hal French, Manager

CITY: **The City of Edmond, Oklahoma,**
an Oklahoma municipal corporation

ATTEST: By: _____
Darrell Davis, Mayor

City Clerk

EPWA: **The Edmond Public Works Authority,**
an Oklahoma public trust

ATTEST: By: _____
Darrell Davis, Chairman

Secretary

EXHIBIT A
Legal Description – Sculpture Park Tract

Lot 2, Block 1

April 8, 2024

A tract of land being a part of the Southeast Quarter (SE/4) of Section Thirty (30), Township Fourteen (14) North, Range Two (2) West of the Indian Meridian, Edmond, Oklahoma County, Oklahoma, being more particularly described as follows:

Commencing at the Southeast (SE) Corner of said Southeast Quarter (SE/4);

THENCE North 00°23'03" West, along and with the East line of said SE/4, a distance of 1318.60 feet to the Southeast (SE) corner of the recorded plat HUNTWICK;

THENCE South 89°36'57" West, along and with the South line of said plat HUNTWICK, a distance of 50.00 feet to a point on the West right-of-way line of N Coltrane Road, also being the POINT OF BEGINNING;

THENCE along and with said West right-of-way line, the following four (4) calls:

1. South 00°23'03" East, a distance of 988.60 feet;
2. North 89°58'44" West, a distance of 14.95 feet;
3. South 00°22'24" East, a distance of 244.90 feet;
4. South 44°42'46" West, a distance of 49.42 feet to the North right-of-way line of E 2nd Street;

THENCE South 89°47'57" West, along and with said North right-of-way line, a distance of 513.42 feet;

THENCE North 00°12'03" West, departing said North right-of-way line, a distance of 159.72 feet;

THENCE North 68°32'24" West, a distance of 274.67 feet;

THENCE on a non-tangent curve to the right having a radius of 360.03 feet, a chord bearing of North 79°05'06" West, a chord length of 305.50 feet and an arc length of 315.49 feet;

THENCE South 89°47'57" West, a distance of 286.28 feet

THENCE North 00°23'23" West, a distance of 110.48 feet;

THENCE North 68°23'58" West, a distance of 203.36 feet;

THENCE South 75°45'47" West, a distance of 103.08 feet;

THENCE South 68°59'33" West, a distance of 106.98 feet;

THENCE South 72°34'33" West, a distance of 104.70 feet;

THENCE North 85°37'37" West, a distance of 100.32 feet;

THENCE South 68°29'36" West, a distance of 107.34 feet;

THENCE North 74°33'31" West, a distance of 103.85 feet;

THENCE North 72°58'39" West, a distance of 104.70 feet;

THENCE North 87°20'18" West, a distance of 100.12 feet;

THENCE North 43°48'13" West, a distance of 145.00 feet;

THENCE North 59°05'45" West, a distance of 110.43 feet to a point on the West line of said Southeast Quarter (SE/4);

THENCE North 00°28'08" West, along and with the West line of said Southeast Quarter (SE/4), a distance of 292.93 feet to a point on the South line of the recorded plat HUNTWICK II BLOCKS 12-13 recorded in Book PL 54, Page 6;

THENCE along and with the South and East lines of said plat HUNTWICK II BLOCKS 12-13 the following Three (3) calls:

1. THENCE North 89°35'53" East, a distance of 1,054.90 feet;
2. THENCE North 50°24'19" East, a distance of 277.59 feet;
3. THENCE North 00°11'43" West, a distance of 464.11 feet to a point on the South line of the recorded plat HUNTWICK II BLOCKS 1-7 Recorded in Book PL 54, Page 65;

THENCE along and with the South line of said plat HUNTWICK II BLOCKS 1-7 and the South line of the recorded plat HUNTWICK the following Five (5) calls:

1. THENCE North 89°48'17" East, a distance of 978.96 feet;
2. THENCE South 20°47'57" East, a distance of 59.59 feet;
3. THENCE South 26°51'21" East, a distance of 135.59 feet;
4. THENCE South 49°38'43" East, a distance of 152.14 feet;
5. THENCE North 89°36'57" East, a distance of 140.00 to the POINT OF BEGINNING.

Less & Except:

Commencing at the Southeast (SE) Corner of said Southeast Quarter (SE/4);

THENCE North 00°23'03" West, along and with the East line of said SE/4, a distance of 1,318.60 feet to the Southeast (SE) corner of the recorded plat HUNTWICK;

THENCE along and with the South line of said plat HUNTWICK the following Five (5) calls:

1. South 89°36'57" West, a distance of 190.00 feet;
2. North 49°38'43" West, a distance of 152.14 feet;
3. North 26°51'21" West, a distance of 135.59 feet;
4. North 20°47'57" West, a distance of 59.59 feet;
5. South 89°48'17" West, a distance of 399.48 feet;

THENCE South 00°04'58" East, departing the South line of said Plat HUNTWICK, a distance of 222.05 feet; to the POINT OF BEGINNING;

THENCE South 00°04'58" East, a distance of 120.00 feet;

THENCE South 89°55'02" West, a distance of 210.00 feet;

THENCE North 00°04'58" West, a distance of 120.00 feet;

THENCE North 89°55'02" East, a distance of 210.00 feet to the POINT OF BEGINNING.

Containing 2,330,979 square feet or 53.5119 acres, more or less.

Basis of Bearing: Grid North as established by state plane datum (Oklahoma State Plane North Zone NAD83). All Distances are grid distances in U.S. Survey Feet.

Prepared by Matthew Johnson P.L.S. 1807
Johnson & Associates
Certificate of Authorization No. 1484 (Expires 6-30-25)
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EXHIBIT B
Budget Estimate

<u>OPERATIONS/MAINTENANCE</u>	
Salaries & Benefits	\$ 301,000
Landscape & Horticulture <i>(seasonal color, grass fertilizer, insect applications, general enhancement, resode lawn, plant replacements, aeration, mulch replacement)</i>	\$ 310,000
Irrigation Repairs	\$ 5,000
Water Feature Repairs & Maintenance	\$ 5,000
General Park Maintenance & Repairs	\$ 20,000
Equipment Rental & Supplies	\$ 20,000
Equipment Repairs & Small Tools	\$ 10,000
Lighting/Electrical	\$ 10,000
Misc. Supplies	\$ 15,000
Operations & Maintenance Subtotal	\$ 696,000
<u>CONTRACTED SERVICES</u>	
Security	\$ 10,000
Custodial <i>(cleaning restrooms, trash, power washing)</i>	\$ 50,000
Landscape/Horticulture Maintenance <i>(seasonal contract labor)</i>	\$ 150,000
Tree Care <i>(fertilization, pruning, disease control)</i>	\$ 20,000
Contracted Services Subtotal	\$ 230,000
<u>PROGRAMMING/ACTIVATION</u>	
Marketing/Advertising	\$ 5,000
Printing/Event Signage	\$ 10,000
Movie Nights	\$ 15,000
Concerts	\$ 40,000
Ticketed Shows	\$ 32,000
Signature Events	\$ 75,000
Seasonal Tree Lighting	\$ 20,000
Programming Supplies & Equipment	\$ 5,000
Sponsor Fulfillment/Donor Stewardship	\$ 20,000
Misc Supplies	\$ 10,000
Consulting <i>(arborist, IT, fund raising, public relations)</i>	\$ 10,000
Programming/Activation Subtotal	\$ 242,000
EXPENSE SUB-TOTAL	\$ 1,168,000
10% Contingency	\$ 116,800
GRAND TOTAL	\$ 1,284,800
70% Park Conservancy Trust (City of Edmond)	\$ 899,360
30% Park Endowment	\$ 385,440