

**AMENDMENT TO COMPATIBLE USAGE AGREEMENT**  
(Fleming House in Platt Park)

**THIS AMENDMENT TO COMPATIBLE USAGE AGREEMENT** (“Amendment”) is made and entered by and between the **CITY AND COUNTY OF DENVER**, a Colorado municipal corporation, and **THE PARK PEOPLE**, a Colorado nonprofit corporation, whose address is 715 S. Franklin Street, Denver, Colorado 80209, and jointly referred to herein as the “Parties” and individually as a “Party”.

**RECITALS**

**A.** The City and County of Denver (the “City”) and The Park People (“TPP”) entered into a Compatible Usage Agreement dated November 2, 2010 (City Clerk Filing # 10-1044) (“Agreement”), which, among other things, provided for certain improvements to be made at the James A. Fleming House situated within Platt Park and addressed 1510 South Grant Street in Denver (the “Fleming House”); and

**B.** Due to some unforeseen conditions and occurrences at Fleming House since the time of entering the Agreement, the City and TPP have jointly concluded that the Agreement needs to be amended to address these changed circumstances and to provide for the City’s financial participation in portions of the work and improvements described in this Amendment.

**C.** The City and TPP concur that the changes set forth in this Amendment are in the best of interest of achieving the ultimate purpose of the Agreement and will mutually benefit both parties and the public;

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual agreements of the Parties set forth below, it is understood and agreed as follows:

**1. Plan Changes; First Phase.** The “Hoehn Drawings” referred to in paragraph (b)1) of Section 5 of the Agreement have been revised and are now dated November 17, 2010. The phrase “Hoehn Drawings” shall now refer to these revised drawings, a copy of which is available for review in the offices of the Denver Department of Parks and Recreation. Even though the Hoehn Drawings refer to two phases of work, all of the work and improvements depicted and prescribed in the Hoehn Drawings, except for the rehabilitation and painting of the first floor windows in the Fleming House, are to be completed in accordance with the time frames and requirements set forth in the Agreement. The work and improvements so provided in the Hoehn Drawings, except for the rehabilitation and painting of the first floor windows in

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Fleming House, shall constitute Phase One of the Fleming House project, along with the work and improvements described in Section 2 of this Amendment (“**Phase One**”).

2. **City Participation.** The City has incurred or proposes to incur certain costs for remedying certain unforeseen conditions and occurrences at Fleming House and for certain work to be performed by TPP beyond what is specified in the Hoehn Drawings.

(a) **Asbestos Removal.** Through site investigations, asbestos was discovered on site at the Fleming House. At some significant cost to the City, the City arranged for the removal of the asbestos in accordance with all legal requirements and the asbestos has been so removed. The City is solely responsible for these costs of this asbestos removal.

(b) **Freezing/Water Damage.** Certain pipes, radiators and other water-bearing facilities in Fleming House were damaged last winter by a freeze and thaw. TPP has agreed to undertake the repair of the water damage to Fleming House and the repair and replacement of certain facilities in Fleming House as part of Phase One, and the City agrees to contribute towards the costs incurred or to be incurred by TPP: 1) for the repair of the water damage to Fleming House the amount of \$5,087.00 and 2) for the repair and/or replacement of portions of the heating and air conditioning system in Fleming House (“**HVAC**”) the amount of \$13,159.00, for a total amount of eighteen thousand two hundred forty-six dollars (\$18,246.00). The breakdown of the \$13,159.00 costs for the HVAC work is set forth in Exhibit A to this Amendment and a description of the new HVAC system is described in a document entitled “Heating Revision, dated 03/09/11, issued no. 7, Hoehn Architects PC – Seven Sheets noted: M1, M2, P1, P2, MP1, MP2, MP3.” TPP agrees to accept this payment as complete satisfaction of the City’s financial obligations towards the repair and/or replacement of the facilities described in this paragraph.

(c) **Other City Expenses.** In addition, the City agrees to pay to TPP the amount of eleven thousand nine hundred eighty-seven dollars (\$11,987.00) for the following work by TPP: 1) installation of a dedicated circuit for a fire alarm to be installed by the City (\$293); 2) subsurface roof drain damage repair (\$305); 3) removal of crawl space rubble (\$812); 4) attic insulation (\$6,131); 5) hardwood floor repairs on first floor (\$3,300); 6) based door (\$274); and 7) temporary heat (\$872). TPP agrees to satisfactorily complete this work as part of Phase One and to accept the payment of \$11,987.00 as complete satisfaction of the City’s financial obligations towards the work described in this paragraph.

(d) Maximum Contract Amount. The total amount the City is obligated to pay TPP under this Amendment is thirty thousand two hundred thirty three dollars (\$30,233.00), being the total of \$18,246.00 of paragraph (b) above and \$11,987.00 of paragraph (c) above. The City shall have no other financial obligations under this Amendment. Subject to the satisfactory completion of the work described in this Section 2, the City shall pay TPP the amount of \$30,233.00 upon the satisfactory completion of Phase One.

3. Phase Two. In addition to the rehabilitation and painting of the first floor windows at Fleming House (as provided in the Hoehn Drawings), TPP agrees to perform the following exterior work at Fleming House as part of a Phase Two project: 1) repoint and clean exterior masonry; 2) paint exterior wood work; and 3) rehabilitate and reconstruct original wood shutters. TPP anticipates raising additional funds for this Phase Two work in the near future, including applying for a grant from the State Historical Fund. While it is projected that this Phase Two work will be funded and completed before December 31, 2011, TPP agrees to use good faith efforts to fund and complete the Phase Two work no later than December 31, 2012. Any additional time needed to complete the Phase Two work will require approval of the Manager of Parks and Recreation.

4. Paragraph (q) of Section 18 is amended to read as follows:

(q) No Employment of Illegal Aliens:

1) This Agreement is subject to Division 5 of Article IV of Chapter 20, Denver Revised Municipal Code and any amendments (the “**Certification Ordinance**”).

2) TPP certifies that:

a) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

b) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3) TPP also agrees and represents that:

a) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

b) It shall not enter into a contract with a consultant or contractor that fails to certify to TPP that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

c) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

d) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires TPP to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

e) If it obtains actual knowledge that a consultant or contractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such consultant or contractor and the City within three (3) days. TPP will also then terminate such consultant or contractor if within three (3) days after such notice the consultant or contractor does not stop employing or contracting with the illegal alien, unless during such three-day period the consultant or contractor provides information to establish that the consultant or contractor has not knowingly employed or contracted with an illegal alien.

f) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S, or the City Auditor, under authority of D.R.M.C. 20-90.3.

4) TPP is liable for any violations as provided in the Certification Ordinance. If TPP violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, TPP shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may, at the discretion of the City, constitute grounds for disqualifying TPP from future contracts with the City.

5. **Agreement**. All work and improvements specified in this Amendment shall be performed in accordance with the terms and conditions of the Agreement. Except as expressly provided in this Amendment, the Agreement is hereby ratified and affirmed and shall remain in full force and effect.

**Contract Control Number:** XC0A012

**Vendor Name:** THE PARK PEOPLE

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DAVID W. BROADWELL, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the day first above written.

**Contract Control Number:** XC0A012

**Vendor Name:** THE PARK PEOPLE

By:  \_\_\_\_\_

Name: DALE HEYDON  
(please print)

Title: EXECUTIVE DIRECTOR  
(please print)

**ATTEST: [if required]**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

