MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF AUSTIN AND THE WALLER CREEK CONSERVANCY RELATING TO THE REVITALIZATION OF THE WALLER CREEK DISTRICT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This Memorandum of Understanding (this "MOU" or this "Agreement") is entered into this 28th day of April, 2011 by and between the City of Austin, Texas ("City") and the Waller Creek Conservancy, a Texas non-profit corporation ("Conservancy") (collectively, "Parties").

RECITALS

WHEREAS, the area of the City referred to as the Waller Creek District (the "District") is a prominent geographic feature that helped to shape the historical evolution of the City; and

WHEREAS, the District is generally described as the area bounded on the west by Trinity Street from 15th Street south to 11th Street, then east along 11th Street to Red River Street, then south along Red River Street to 4th Street, then west along 4th Street to Trinity Street, then south along Trinity Street to Town Lake; on the south by Town Lake from Trinity Street east to Cumming Street, then east along Cummings Street to East Avenue; on the east by East Avenue from Cummings Street north to the south bound access road of IH-35 to 15th Street; and on the north by 15th Street between the south bound access road of IH-35 and Trinity Street; and

WHEREAS, the City is currently constructing a flood control tunnel (the "Tunnel") along Waller Creek which when completed in 2014 will remove 28 acres of property from the 100 year flood plain and facilitate the enhancement and revitalization of the District and the surrounding area; and

WHEREAS, there is limited funding currently identified by and available to the City to perform the necessary design work to develop, operate and/or maintain the District and to create a premier amenity with a high level of design excellence, and as a result the City is interested in seeking support from a private entity to financially assist the City with these functions; and

WHEREAS, cities throughout the country have entered into public-private partnerships with nonprofit organizations to create and revitalize urban parks and maximize the development, operation, and maintenance of such parks, including partnerships for Atlanta's Piedmont Park, Brooklyn's Prospect Park, Chicago's Millennium Park, Detroit's Campus Martius Park, Houston's Discovery Green Park, New York's Central Park, Pittsburgh Forest Park, Portland's Courthouse Square, and St. Louis's Forest Park; and

WHEREAS, pursuant to a resolution adopted by the City Council on or about the date hereof, the City has created the Waller Creek Local Government Corporation (the "LGC") pursuant to Chapter 431 of the Texas Transportation Code ("Chapter 431"), for the purpose of

implementing and overseeing, without limitation, the financing, design, construction, maintenance, and operation of the District; and

WHEREAS, the Conservancy was formed on July 30, 2010, to, among other things, (i) facilitate and aid the City with respect to its enhancement and development of the District, (ii) raise a portion of the necessary funds to develop a comprehensive design of the District, (iii) defray costs of the landscaping and other amenities, and (iv) assist the City with developing proposed zoning and land use rules to be adopted as a zoning or development overlay to ensure the quality and consistency of the design and development of the District; and

WHEREAS, the City Council of the City approved and adopted Resolution No. 2010923-090 on September 23, 2010, directing the City Manager to explore a public-private partnership with the Conservancy for the development, management, and operation of the District including Waterloo and Palm Park and recommend to the City Council a structure of the potential roles and responsibilities of the Parties including an implementation schedule; and

NOW, THEREFORE, in furtherance of Resolution No. 2010923-090 and in order to advance their mutual objectives with respect to Waller Creek and to commence a collaborative process with each other, the Parties agree as follows:

SECTION 1.
PURPOSE OF AGREEMENT.

The purpose of this Agreement is to lay the foundation for a cooperative working relationship between the Parties, and to establish the role of each Party in that relationship as the Parties continue to work together to further their common goal of preserving, restoring, developing, enhancing, rehabilitating and maintaining the District and to lay the foundation for a joint development agreement that will ultimately be entered into by and between the City and the Conservancy to govern the implementation of the Design Plan (defined below).

SECTION 2.
THE CONSERVANCY

2.1 Purposes of the Conservancy. The purposes of the Conservancy shall include, without limitation, the following:

(a) Raise funds on an initial and ongoing basis to pay for a portion of the costs of design, construction, maintenance, and operation of Waller Creek.

(b) Administer the design process for the District that will seek to develop, design, construct, maintain and operate the District, working in cooperation with the City in accordance with this MOU and taking into consideration the Master Plan.

(c) Assist the City with discussions with the State of Texas, the University of Texas System, Travis County, and other governmental entities, private landowners, the

University of Texas, Seton Hospital, and other stakeholders with respect to easements, acquisition of property, development issues, and other matters related to the District.

(d) Currently it is anticipated that the Conservancy will assume responsibility for the development, redevelopment, and ongoing maintenance of the following portions of the District: Waterloo Park, Palm Park and the Waller Creek corridor (collectively, the "Conservancy Areas"). The City will maintain responsibility for all other public portions of the District, including streets and public rights of way. The precise scope of the Conservancy Areas is subject to change as the Design Process unfolds.

(e) Assist the City with public outreach with respect to the District.

(f) Promote, preserve, and encourage the operation and usage of the District.

(g) No funds contributed to the Conservancy will be spent on improvements to private land, and to the extent any private land will be converted to public land to be considered Conservancy Areas, the City or the LGC will be required to acquire either fee ownership of such land or acquire a permanent easement for park use, either by purchase of the land or by contribution of the land by the private owners.

2.2 Directors and Officers.

(a) The Conservancy board will initially include Tom Meredith, Melba Whatley, and Melanie Barnes.

(b) A representative from the City Manager's office will be a non-voting ex-officio member of the Conservancy board.

(c) The Conservancy officers are Tom Meredith (Chairman), Melba Whatley (President), and Melanie Barnes (Secretary/Treasurer).

2.3 Transparency of Operations.

(a) The Conservancy board shall from time to time hold board meetings which shall be open to the public. Agendas of such meetings will be published in advance on the Conservancy's website.

(b) Annual audits of the Conservancy will be conducted on a calendar year basis by a qualified CPA firm chosen by the Conservancy.

(c) The Conservancy will produce an annual report.

(d) All books and records of the Conservancy, audits, board meeting minutes, annual reports, and information regarding donations will be available to the public, subject to requests for confidentiality by specific donors and with respect to legal,

employment, strategic planning for donor outreach and development, and other similar matters.

(e) The Conservancy will establish a public website with information about the Conservancy, its operations, and the District.

(f) Neither the Conservancy nor its meetings shall be subject to the Open Meetings Act.

SECTION 3.
THE CITY

3.1 It is the City's intent to create a public-private partnership that will result in the LGC and the Conservancy designing, developing, operating, maintaining and managing the District.

3.2 The City or the LGC shall maintain ownership of all public property currently owned by the City in the District.

3.3 The City shall maintain its authority to approve the Design Plan in accordance with Section 4 below, such authority to be exercised in good faith and in cooperation with the Conservancy.

3.4 Part 2 of Ordinance No. 20100624-151 shall be suspended pending completion of the design competition and final design approval for Waller Creek, at which time the Ordinance will be amended to reflect any changes required by the final design.

SECTION 4.
DESIGN COMPETITION

4.1 Design Process. The Conservancy will administer a design process (the "Design Process") to produce a comprehensive design for the development, renovation and improvement of the District and surrounding property. The purpose of the Design Process is to develop a world-class design of the highest standards and esthetics for the District and, if and as appropriate, adjacent areas, and to recommend development standards for the District to be considered for adoption by the City as an amendment to the City's Land Development Code in the form of an overlay district, taking into consideration existing overlay districts affecting the District as of the date of this MOU. The Design Process for the District shall take into consideration, but shall not be bound by and could materially deviate from, the recommendations articulated in the Master Plan.

(a) The Conservancy will contribute up to [$400,000] to defray the costs of the Design Process. The City, will contribute, via payment to the LGC, an amount equal to the funds contributed by the Conservancy for such purpose, up to a

maximum amount of [$400,000]. The LGC will enter into a Design Competition Management Agreement with the Conservancy governing, among other items, expenditure of City and Conservancy contributions.

(b) The Design Process will be conducted in a manner similar to the process used by conservancies in other cities, and shall include the following steps:

(i) All aspects of the Design Process will be administered by a design manager selected by the Conservancy and also approved by the City Manager. Costs incurred by the Conservancy with respect to recruiting and retention of the design manager shall be considered as a part of the Conservancy's [$400,000] contribution.

(ii) An initial list of design firms, selected by the Conservancy and also approved by the City Manager, will be invited to respond to requests for qualifications in connection with the Design Process.

(iii) A short list of design firms will then be selected by the Conservancy and also approved by the City Manager based on their responses to the request for qualifications.

(iv) Each short-listed design firm will then be invited to prepare a final design schematic and model and provided with a stipend in an amount to be agreed upon by the Conservancy and the City Manager to defray a portion of the costs of preparing such design.

(v) Each short-listed design firm will certify that they took the Waller Creek Master Plan into consideration in developing their design schematic and model.

(vi) The design manager will select an independent jury to evaluate each of the proposals of the short-listed design firms and recommend a single firm to approval in good faith by the City and the Conservancy. Neither the Conservancy nor the City will participate in the selection of the jury. If the City and the Conservancy disapprove such recommendation, then the City and the Conservancy will consider one of the other short-listed design firms.

SECTION 5.
JOINT DEVELOPMENT AGREEMENT AND IMPLEMENTATION OF PLAN

5.1 Upon conclusion of the Design Process and approval of the Design Plan by the City Manager and the Conservancy, the Parties shall enter into a Joint Development Agreement (the "Joint Development Agreement") governing their respective rights and responsibilities with respect to the District. Upon execution of the Joint Development Agreement by the City and the Conservancy, the MOU shall terminate.

5.2 Until such time as a Joint Development Agreement has been executed, the City will not proceed with the design, development, or implementation of projects within the District unless approved in writing by the Conservancy; *provided, however*, that the City may proceed with the East Sixth Street Streetscape Design Project, except for the Waller Creek bridge portion of such project.

5.3 The Joint Development Agreement will address the following (which list shall not be deemed to be an exhaustive list):

(a) The City or the LGC will (i) manage, own, hold title to public land and improvements, including the Conservancy Areas, (ii) execute contracts among the City and the Conservancy and with various third party entities for the development, redevelopment, construction, maintenance, and operation of improvements, all pursuant to the authority, powers, and restrictions that apply to LGCs as set forth in Chapter 431, (iii) administer funds contributed by the Parties with respect to District activities, and (iv) other matters as may be agreed to by the City and the Conservancy.

(b) The initial LGC board will include three representatives of the Conservancy and two representatives of the City. The LGC board may be expanded to include such other members as the Conservancy and the City shall mutually approve.

(c) The precise scope of land, facilities, and improvements to be included in the Conservancy Areas, for which the Conservancy will assume obligations.

(d) The process for adoption of an overlay district incorporating the development standards approved pursuant to the Design Process.

(e) Procedures for streamlining the development review process for both public and private development in the District, including projects undertaken by the Conservancy.

(f) The process for administration and documentation of the development and operating phases of the design, construction, maintenance, and operation of the District, including the execution of temporary occupancy agreements, construction agreements, and operating agreements between the Conservancy and City, as appropriate.

(g) Approvals by the Conservancy and the City with respect to District design, development, operation, and maintenance.

(h) The development of policies and procedures for use of Conservancy Areas.

(i) Integration and coordination of consultants and contractors to both the City and the Conservancy.

(j) Site plan, building permit, and other approval procedures for District improvement.

(k) Short- and long-term funding obligations of the Parties with respect to District assets.

(l) The allocation of responsibilities between the City and the Conservancy with respect to design, construction, operation, and maintenance of District assets.

(m) Form and process for public engagement with respect to the design process, role of the Conservancy, and related matters.

(n) Distribution of revenues accruing to the Conservancy and the City from events in the District, including concessions, user fees, events fees, and other revenue sources.

(o) The provision and coordination of public services by the City to Conservancy Areas, including heat, air conditioning, electricity, water, sewage and other utilities, utilities, fire and police protection, waste removal, and other services.

(p) Indemnification obligations of the City and the Conservancy.

(q) Insurance and bonding requirements for work to be performed by the Parties and their third party consultants, contractors, and agents.

5.4 Project proposals and implementation plans for improvements and other initiatives in the District shall be prepared by the Conservancy, based on available and anticipated funds and in accordance with the Design Plan. The Conservancy shall comply with the City's review and approval process for park projects, improvements, and initiatives. Further, any work performed in the District shall comply with all applicable laws and ordinances, including without limitation, those related to safety issues and permitting pursuant to a "fast track" process agreed to by the City and the Conservancy.

5.5 The City shall have the right to oversee all work performed in the District, including, but not limited to, projects, construction of capital improvements, landscaping, and other initiatives for the purpose of ensuring that such work is performed in accordance with the Design Plan.

SECTION 6.
NOTICES

With respect to the City:

Sue Edwards
Assistant City Manager
City of Austin
301 W. 2nd Street, 3rd Floor
Austin, Texas 78701
512-974-2200

sue.edwards@ci.austin.tx.us

With copies to:

Marc A. Ott
City Manager
City of Austin
301 W. 2nd Street, 3rd Floor
Austin, Texas 78701
512-974-2200
marc.ott@ci.austin,tx.us

Karen Kennard
City Attorney
City of Austin
301 W. 2nd Street, 3rd Floor
Austin, Texas 78701
512-974-2268
karen.kennard@ci.austin,tx.us

Leslie Browder
Chief Financial Officer
City of Austin
301 W. 2nd Street, 3rd Floor
Austin, Texas 78704
512-974-2283
leslie.browder@ci.austin,tx.us

Robert Goode
Assistant City Manager
City of Austin
301 W. 2nd Street, 3rd Floor
Austin, Texas 78701
robert.goode@ci.austin.tx.us

Sara Hensley, CRPR
Director of Parks and Recreation
City of Austin
200 S. Lamar
Austin, Texas 78704
512-974-6700
sara.hensley@ci.austin.tx.us

George Adams
Assistant Director
Planning and Development Review Department

City of Austin
505 Barton Springs Road
Austin, Texas 78704
512-974-2146
mailto:george.adams@ci.austin.tx.us

With respect to the Conservancy:

Melba Whatley
President
Waller Creek Conservancy
2909 West 35th Street
Austin, Texas 78703
512-478-4675
melba@mdwinterests.com

With copies to:

Tom Meredith
Chairman
Waller Creek Conservancy
248 Addie Roy Road, Suite C200
Austin, Texas 78746
512-732-2544
tom@mfiaustin.com

Melanie Barnes
Secretary/Treasurer
Waller Creek Conservancy
1706 Windsor Road
Austin, Texas 78703
512-422-1023
mbmbarnes@aol.com

David Dawson
Winstead PC
401 Congress, Suite 2100
Austin, Texas 78701
512-370-2847
ddawson@winstead.com

SECTION 7.
GENERAL PROVISIONS

7.1 The Parties agree to work together at all times in good faith, meet regularly, and keep each other informed as to activities of the other, and maintain at all times a formal representative who shall serve as a point of contact for communications.

7.2 Each Party shall be responsible for all costs and expenses associated with the preparation and adoption of this MOU, the preparation and adoption of a joint development agreement, and future actions related thereto.

7.3 This MOU may be executed in multiple counterparts which, taken together, shall collectively constitute a single agreement, but in making proof of such agreement, it shall not be necessary to account for more than one such counterpart.

7.4 This MOU shall be performed and enforced in Travis County, Texas, and shall be construed in accordance with the laws of the State of Texas. Venue with respect to all disputes shall reside with the district courts of Travis County, Texas.

[SIGNATURE PAGES FOLLOW]

EXECUTED in multiple counterpart originals effective as of the date first set forth above.

ATTEST

By: _____
Shirley A. Gentry, Secretary

CITY OF AUSTIN,
A Texas home-rule municipality

By: _____
Marc A. Ott, City Manager

WALLER CREEK CONSERVANCY,
a Texas non-profit corporation

By: _____
Tom Meredith, Chairman

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