
AMENDMENT NUMBER THREE
TO THE
PARKLAND IMPROVEMENT, MANAGEMENT, AND OPERATIONS AGREEMENT
(NORWOOD PARK)

Dated: _____, 2021

This Amendment Number Three to the Parkland Improvement, Management, and Operations Agreement (Norwood Park) ("**Amendment Three**") is made and entered into by and between the **NORWOOD PARK FOUNDATION, INC.**, a Texas domestic non-profit corporation (the "**Nonprofit**") and the **CITY OF AUSTIN, TEXAS**, a Texas home rule municipal corporation organized and existing under the laws of the State of Texas (the "**City**") (each a "**Party**" and collectively the "**Parties**") for the purposes and considerations stated below:

WHEREAS, the City and the Nonprofit desire to amend the Parkland Improvement, Management, and Operations Agreement (Norwood Park) (the "**Original Agreement**") to (a) modify the Initial Term, as modified by Amendment Number One ("**Amendment One**") and Amendment Number Two ("**Amendment Two**") to the Original Agreement, and (b) modify the planning, phasing and funding requirements of the Original Agreement, as modified by Amendment Two; and

WHEREAS, Section XXV.A. of the Original Agreement allows modification, provided such modification is made in writing and executed by each Party;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by both Parties, the Parties agree to be bound to the obligations and to the performance and accomplishment of the hereinafter described modifications, alterations and changes to the Original Agreement in the following respects only, and all other terms and conditions shall remain as stated in the Original Agreement, as amended by Amendment One and Amendment Two:

Section 1 City and Nonprofit agree to amend the third RECITAL of the Original Agreement to add after WHEREAS, "under separate agreement," and remove all of Section IV. Q.

Section 2 City and Nonprofit agree to amend the Definitions in Section I of the Original Agreement by adding two new definitions between the definitions of "**Preliminary Phase 2 Plan**" and "**Survey**" as follows: "**Subphase A Work** has the definition set forth in Section IV.B of this Agreement. **Subphase B Work** has the definition set forth in Section IV.B of this Agreement."

Section 2 City and Nonprofit agree to amend the Initial Term in Section II.A. of the Original Agreement, as amended by Amendment One and Amendment Two, by striking out the phrase in the twelfth line of the paragraph that states “extended to five years next following the effective date of this Agreement (collectively, the “**Initial Term**”) and substituting in its place the following new phrase: “extended to March 10, 2023, ten years next following the effective date of this Agreement (collectively, the “**Initial Term**”).”

Section 3 City and Nonprofit agree to amend the Ongoing Term in Section II.B. of the Original Agreement by:

- a. striking out the phrase in the second line of the paragraph that states “(1) Nonprofit at substantially its own costs and expense completes the Parkland Improvements”, and
- b. renumbering the phrases in the second through fifth lines of the paragraph that state “(2) Nonprofit gives City one-hundred eighty (180) calendar days advance written notice of its intention to exercise its extension of the Initial Term of the Agreement, and the City does not incur more than twenty-five percent (25.0%) of the total costs incurred in connection with the Phase 1 Work and the Phase 2 Work” to state “(1) Nonprofit gives City one-hundred eighty (180) calendar days advance written notice of its intention to exercise its extension of the Initial Term of the Agreement, and (2) the City does not incur more than twenty-five percent (25.0%) of the total costs incurred in connection with the Phase 1 Work and the Phase Two Work.”, and
- c. striking out the phrase in the fourth line of the paragraph that states “the City does not incur more than twenty-five percent (25.0%) of the total costs incurred in connection with the Phase 1 Work and the Phase Two Work” and substituting in its place the following new phrase: “the City does not incur more than \$2,950,000.00 (Two Million Nine Hundred Fifty Thousand and No/100 Dollars) (the “**Maximum City Contribution**”) of the total costs incurred in connection with the Phase 2 Work.”

Section 4 City and Nonprofit agree to amend the Responsibilities of the Nonprofit in Section IV.B. of the Original Agreement by:

- a. adding a new word to the tenth line of the paragraph, between “a” and “preliminary” as follows: “to prepare a separate preliminary”, and
- b. striking out the phrase in the eleventh line of the paragraph that states “construction and renovation” as follows: “design development plan for”, and
- c. adding language to the eleventh line of the paragraph, between “design development plan for construction and renovation” and “of the historical

Norwood House dwelling unit and adjacent park grounds” as follows: “for Subphase A and Subphase B (as defined below) of Phase 2 of”, and

- d. adding a new phrase and a comma to the thirteenth line of the paragraph between the open parenthesis symbol and “the “**Phase 2 Work**”) as follows: “Subphases A and B are, collectively,” and
- e. adding a new phrase to the fourteenth line of the paragraph, between “for” and the open parenthesis symbol as follows: “Subphase A and Subphase B”, and
- f. adding a new word and a comma to the fourteenth line of the paragraph between the open parenthesis symbol and “the **Preliminary Phase 2 Cost Estimate**” as follows: “(collectively, the **Preliminary Phase 2 Cost Estimate**)”, and
- g. adding a new word to the fourteenth line of the paragraph, between “a” and “preliminary” as follows: “a separate preliminary design development plan”, and
- h. striking out the phrase in the fifteenth line of the paragraph that states “the Phase 2 Work”, and
- i. adding a new word and a comma to the line of the paragraph between the open parenthesis symbol and “the **Preliminary Phase 2 Cost Estimate**”, as follows: “(collectively, the “**Preliminary Phase 2 Cost Estimate**)”, and
- j. adding three new sentences after the last sentence of the paragraph as follows: “Collectively, the Preliminary Phase 2 Work and the Preliminary Phase 2 Cost Estimate are the “**Preliminary Phase 2 Plan.**” Subphase A of Phase 2 consists of the rehabilitation and restoration of the exterior shell of the Norwood house, construction of the parking lot, roads, sidewalks and pathways at Riverside Drive and Edgecliff Terrace, and construction of all utilities and utility connections (the “**Subphase A Work**”) and Subphase B consists of the finish-out of the Norwood House interior, restoration of the historic ornamental gardens, reconstruction of the “tea house”, construction of a new terrace behind the Norwood House and outdoor gathering spaces.(the “**Subphase B Work**”).”

Section 5 City and Nonprofit agree to amend the Responsibilities of the Nonprofit in Section IV.C. of the Original Agreement by

- a. adding language to the third line of the paragraph, between “Prior to commencing any Phase 2 Work,” and “Nonprofit, if necessary...”, as follows: “at each milestone of Subphase A and Subphase B, including prior to submittal for permit review and prior to initiating the bidding process,” and
- b. striking out the phrase in the eighth line of the paragraph that states “sufficient to fund no less than **one-hundred percent (100%)** of the Preliminary Phase 2 Cost Estimate, as updated and revised to reflect current cost conditions” and substituting in its place the following new phrase:

“sufficient to fund all costs of the Preliminary Phase 2 Cost Estimate relating to Subphase A Work as updated and revised to reflect current cost conditions, and Subphase B Work after completion of Subphase A Work as updated and revised to reflect current cost conditions in excess of the Maximum City Contribution.”

Section 6 City and Nonprofit agree to amend the Responsibilities of the Nonprofit in Section IV.E. of the Original Agreement by adding language to the third line of the paragraph, between “government entity having jurisdiction,” and “including minority-owned and female-owned business enterprise...”, as follows: “including the non-discrimination requirements of City Code Title 5, the City’s worker safety training, prevailing wage rate compliance, and anti-lobbying ordinances, as well as the bonding, procurement and competitive bidding state law requirements applicable to municipalities, and”

Section 7 City and Nonprofit agree to amend the Responsibilities of the Nonprofit in Section IV.O. of the Original Agreement by adding item 4 after item 3 as follows: “4. Upon PARD’s issuance of a “Notice to Proceed” for a subphase of the Phase 2 construction, Nonprofit shall submit monthly invoices to the PARD representative for review, approval (which approval may not be unreasonably withheld, delayed or conditioned if meeting City requirements) and reimbursement of Nonprofit by City, up to the amount of the Maximum City Contribution (defined below). Invoices must include:

- a) Subcontract Utilization Form;
- b) Subcontractor Supplier Awards Expenditure Report;
- c) Resources Allocation Plan;
- d) Standard City of Austin Consultant Cover Sheet for Payment; and
- e) Copies of all receipts submitted for reimbursement”

Section 8 City and Nonprofit agree to amend the Responsibilities of the Nonprofit in Section IV.Q.(13) of the Original Agreement by adding new Subsection (b) as follows: “(Q) Nonprofit may propose additional improvements to the Park that are consistent with the Preferred Alternative Plan. Any improvements and/or Park programming outside of the Park Improvement and Maintenance Area requires prior written approval from the Director and shall be the subject of a separate agreement between City and Nonprofit.”

Section 9 City and Nonprofit agree to amend the Construction Project Cost and Responsibilities in Section VI. of the Original Agreement by adding one new sentence after the first sentence, as follows: “Upon receipt of an invoice from Nonprofit in compliance with Section IV.O., as amended by this Amendment Three, City shall reimburse Nonprofit for its actual costs for the Phase 2 Work, up to the **Maximum City Contribution.**”

Section 10 City and Nonprofit agree to amend the events of Force majeure in Section XVIII. of the Original Agreement by adding language to the fifth line of the paragraph between

“epidemics” and “acts of domestic or foreign terrorists” as follows: “pandemic, public health emergency, shelter in place order, construction moratorium,”

Section 11 City and Nonprofit agree to remove all of Section XII Revenue; Capital Investment; Reserve Funds; Reports.

Section 12 City and Nonprofit agree to amend the Original Agreement by deleting “Exhibit D” and substituting in its place a new “Exhibit D Amendment 3.”

Section 13 City and Nonprofit agree to amend the Original Agreement by deleting “Exhibit F.”

Section 14 Unless waived or consented to by the holder of the encumbrance, this Amendment Three is made and accepted subject to all easements, covenants, restrictions, liens, and other encumbrances of record in Travis County, Texas, affecting the Park Improvement and Maintenance Area as that term is defined in the Original Agreement.

Section 14 All capitalized terms not otherwise defined in this Amendment Three have the meanings assigned to them in the Original Agreement, as amended by Amendment One and Amendment Two.

Section 15 This Amendment Three may be executed in multiple counterparts, each of which shall be considered an original, but all of which together shall constitute one agreement.

THIS WRITTEN AMENDMENT THREE TO THE ORIGINAL AGREEMENT, THE ORIGINAL AGREEMENT, AMENDMENT ONE, AMENDMENT TWO, AND ANY OTHER AGREEMENTS OR WRITTEN DOCUMENTS REFERRED TO BY SUCH AGREEMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[Signature page follows]

NORWOOD PARK FOUNDATION, INC.

By: _____

Name: _____

Title: _____

Date: _____

CITY OF AUSTIN, TEXAS

BY ITS PARKS AND RECREATION DEPARTMENT

Kimberly McNeeley, Director

Date: _____

APPROVED AS TO FORM:

CITY LAW DEPARTMENT

By: _____

Mary Searcy Marrero
Assistant City Attorney

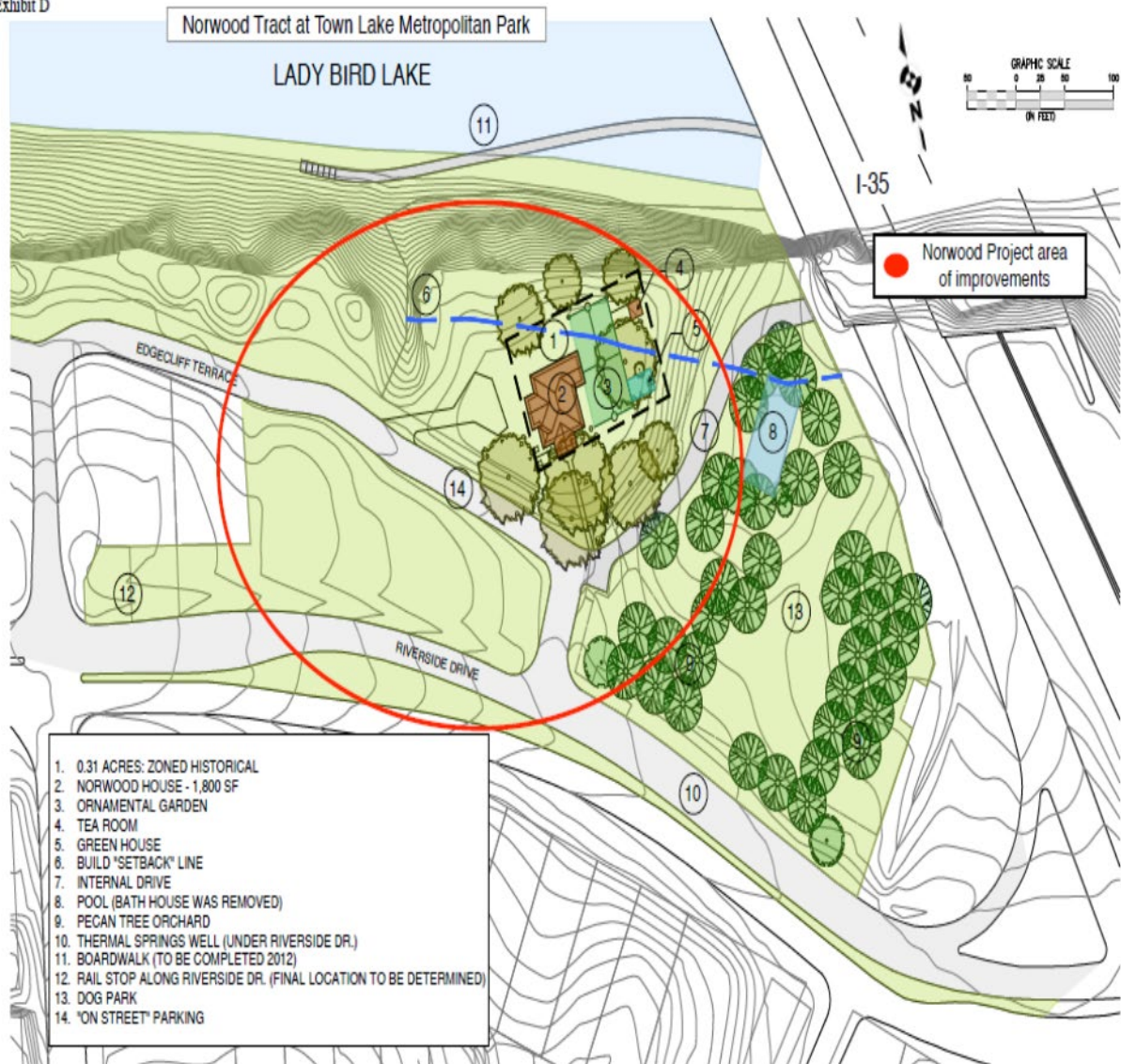
Date: _____

Attachment:

Exhibit D Amendment 3 – Park Improvement Area

EXHIBIT D AMENDMENT 3 PARK IMPROVEMENT AREA

Exhibit D



NORWOOD ESTATE "INVENTORY"



Norwood Park
Condition Assessment and Feasibility Report
Stakeholder Meeting #3: July 20, 2011



Steinman Luevano Structures, LLP