

Funding, Construction, Landscaping, Maintenance & Volunteer Related Services

NEIGHBORHOOD COST PARTICIPATION AGREEMENT CITY OF AUSTIN AND NORTH SHOAL CREEK NEIGHBORHOOD ASSOCIATION

STATE OF TEXAS

COUNTY OF TRAVIS

This Agreement is made and entered into by and between the City of Austin, Texas (the "City") and the North Shoal Creek Neighborhood Association (the "Partner"), hereinafter collectively referred to as the "Parties."

WHEREAS, the Partner desires to participate in developing and/or funding certain City improvements in City right-of-way or, as applicable, park space; and

WHEREAS, the City desires to participate in the development and funding of the improvements as a City project (the "Project");

NOW, THEREFORE, the Parties agree as follows:

1. **The Project.** The location and scope of the Project is described in attached Exhibit "A". The City may self-perform the design and construction of the Project or contract for such services. The Project may consist of multiple sub-projects, all of which will be developed, designed, constructed, and maintained pursuant to the terms of this Agreement.
2. **Project Development.**
 - (a) The City will manage the Project. The Project will be designed in accordance with applicable City standards, specifically including the requirements of the Texas Accessibility Standards.
 - (b) In its complete discretion, the City will construct the Project with its own forces or will solicit bids for the construction of the Project. If the City contracts for the construction of the Project, the City will notify the Partner of the lowest responsible bid and, subject to available funding, enter into a firm unit-price contract with the successful bidder.
 - (c) The reasonable costs to the City of its employees and equipment dedicated to the Project may be credited as an "in-kind" funding contribution.
 - (d) The Partner may cost participate in the Project with funding and/or in-kind volunteer services. "Volunteer" means a person rendering services for or

on behalf of a charitable organization who does not receive compensation in excess of reimbursement for expenses incurred. The term includes a person serving as a director, officer, trustee, or direct service volunteer. A Volunteer is liable to a person for death, damage, or injury to the person or his property proximately caused by any act or omission arising from the operation or use of any motor-driven equipment, to the extent insurance coverage is required by Chapter 601, Transportation Code, and to the extent of any existing insurance coverage applicable to the act or omission. Any Volunteer providing labor or other services for or in connection with the Project will not receive any compensation in excess of reimbursement for expenses incurred. Any measurement of the value of "in-kind" volunteer services to be provided under this Agreement will not result in any direct or indirect payment to the Partner or its Volunteers or exceed the amount of expenses incurred.

3. Project Management.

- (a) The Designated Representative of the Partner will act on behalf of the Partner with respect to the Project and coordinate with the City.
- (b) The Director of the City's Public Works Department will act on behalf of the City with respect to the Project, coordinate with the Partner, and have complete authority to interpret and define the City's policies and decisions with respect to the Project. The Director will designate a City Project Manager and may designate other representatives to transmit instructions and act on behalf of the City with respect to the Project.

4. Management Duties of the City.

- (a) The City agrees to provide to the Partner:
 - (i) written protocols for the performance of landscaping, maintenance, and other associated services by the Volunteers;
 - (ii) written copies of all contracts affecting the Project;
 - (iii) a statement of all disbursements made relating to the Project;
 - (iv) a copy of any executed change orders; and
 - (v) advance notice of the anticipated date of commencement of construction and the area to be impacted by the Project; and the date on which the Volunteer services obligations will commence.
- (b) The City is not responsible for the preservation or replacement of private improvements and landscaping in the City's right-of-way or other property which may be impacted by the construction of the Project.

5. Management Duties of the Partner. The Partner hereby agrees to:

- (a) Provide notice to all owners of the properties abutting the Project of the Project's anticipated schedule and the area to be impacted by the Project;

- (b) Inform the City's Project Manager immediately of any problems observed during construction or maintenance;
- (c) Attend meetings at the request of the City's Project Manager;
- (d) provide the level of funding and/or Volunteer services agreed to in this Agreement; and
- (e) ensure that each and every Volunteer, who will provide labor or other services for the Project, executes a waiver and release in the form attached hereto as Exhibit "C" and made a part hereof prior to performing any volunteer work or services for the Project under this Agreement.

6. Liability

- (a) The City has obtained general liability insurance coverage in the amount of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury or death or property damage arising out of or connected to the Volunteers activities in connection with the Project. This coverage does not apply to an act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others. In addition, this coverage is only for injury or death of third parties and damage to property of third parties and not for injury to Volunteers.
- (b) The City is a self-insured public entity and will require its contractors and consultants to provide liability, automobile, and workers compensation insurance in accordance with standard City of Austin contractual requirements.

7. Financial Obligations.

- (a) The cost of the Project cost is currently estimated at \$120,887, including a construction contingency amount of \$20,088.
- (b) The Partner's share, which is based on providing funding and/or Volunteer services with an agreed-to value, is thirty-six percent (36%) of the cost of the Project.
- (c) To the extent applicable, within 180 days of the execution of this Agreement, the Partner will pay the City the amount of \$0.
- (d) As provided below, the Parties will participate in funding any change orders necessary for the completion of the Project on the basis of their respective funding responsibilities as defined in Exhibit "B".
- (e) The City will notify the Partner in the event additional Volunteer services or funding is needed to address Project conditions and the Partner will endeavor to provide additional Volunteers to meet the City's needs and schedules or its share of such funding within 30 days of approval by the Partner. The City will pay the remaining balance of any such cost.

- (f) Subject to the availability of funding and Volunteer participation, the City may, with a written recommendation from the Partner, adjust the Project scope to address budget constraints, legal requirements, or construction conditions.
 - (g) In addition, if construction conditions, the availability of funding or other constraints restrict the City's ability to complete the Project, the City, in its complete discretion, may determine whether to pursue the Project or a portion of the Project.
 - (h) The City will place any Partner's funds in a Project escrow fund. Any unused portion of the funds will be returned to the Partner within 30 days of Project completion. If applicable, the City will provide the Partner with an accounting of the Project expenses, including Partner funding, within 90 days of Project completion.
8. **City Inspection and Testing.** The City will inspect, test, and accept the Project. The Director will require the contractor to immediately take any appropriate remedial action to correct any deficiencies identified by the City or the Partner.
9. **Additional Projects.** Subject to the availability of funding or other project resources, the Parties may agree to additional projects or subprojects through an amendment to this Agreement.
10. **Miscellaneous.**
- (a) **Force Majeure.** In the event that the performance by the Partner or the City of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act of conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as it reasonably necessary after such occurrence to remedy the effects hereto.
 - (b) **Notice.** Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: City of Austin Public Works Department
505 Barton Springs Road, Suite 750
Austin, Texas 78704
Attention: Neighborhood Partnering Program Manager

PARTNER: North Shoal Creek Neighborhood Association
Sarah Brandon
PO Box 66443
Austin, TX 78766

- (c) **Number and Gender Defined.** As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neutral gender and the singular or plural number shall each be deemed to include the others.
- (d) **Entire Agreement.** This Agreement contains the complete and entire Agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the joint construction of the Projects. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties hereto. All representations and indemnifications made in accordance with this Agreement, as well as all continuing obligations indicated in the Agreement, will survive completion and acceptance of the Project and termination or completion of this Agreement.
- (d) **Effective Date.** This Agreement takes effect upon full execution.
- (e) **Other Instruments.** The Parties agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (f) **Invalid Provision.** Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

CITY OF AUSTIN, TEXAS

By: 

Name: Richard Mendoza

Title: Director, Public Works
Authorized Representative

Date: 4-20-17

[PARTNERING ORGANIZATION]

By: North Shoal Creek Neighborhood Association

Name: Sarah Brandon

Title: Vice-President
Authorized Representative

Date: April 10, 2017

EXHIBIT "A"

I. Background – The Neighborhood Partnering Program was established by a City Council Resolution (Number 20090924-072) directing the City Manager to, “develop a program which supports and enhances neighborhood improvement projects while better leveraging public resources.” The Neighborhood Partnership Program cost-shares or provides grant assistance on projects of various scopes. Cost-sharing can be achieved through cash contributions to the City, in-kind professional services related to the project, and/or in-kind labor and maintenance.

Table 1: The project categories and cost sharing cases are as follows:

Project Type	Cost Range for Total Project Cost	Minimum Neighborhood Share Portion	Maximum City Share Portion
Standard	\$150,000 or less	30%	70%
Large	\$150,000-\$500,000	50%	50%
GAP	Case by case	50%	50%

North Shoal Creek Neighborhood Association submitted a qualified application to help install sidewalks, build a community garden, beautify the area by planting native plants in six bulb-outs, and decorate Steck Bridge.

II. Project Cost Share – North Shoal Creek Neighborhood Association will meet its cost share through in-kind materials, professional services and volunteer hours.

Table 2: Project Cost share estimate
Project Type: STANDARD (\$0-\$150,000)

Project Cost Breakdown	Estimate
North Shoal Creek Neighborhood Association – Cash, Professional Services, Materials, and Volunteer Hours	\$33,839
City of Austin – Construction & Contingency	\$87,048
<i>Project Total Cost</i>	\$120,887
North Shoal Creek Neighborhood Association Cost Share	
Professional Services, Materials, and Volunteer Hours	\$33,839
Maintenance / Volunteer Hours (Not Included in Total Project Costs)	\$10,044
<i>North Shoal Creek Neighborhood Association Cost Share Total</i>	\$43,883
Minimum Required Cost Share %	30%
Actual Cost Share %	36%

The project cost estimate and cost share break downs are included as a separate Exhibit “B” to this document.

III. Details of Work & Project Implementation – North Shoal Creek Beautification, Garden and Sidewalks includes the:

- Installation 4 sidewalk sections
- Building of a community garden
- Installation plants in bulb outs
- Beautification of Steck Bride by adding creative tiles

All improvements are to be constructed to City of Austin Standard Specifications and Details and in compliance with applicable ADA requirements.

The project will be implemented through internal service agreements with Public Works and/or through outside contracting, and from volunteer labor from the North Shoal Creek Neighborhood Association. The City of Austin project coordinator has the responsibility for project implementation, management, and completion.

IV. Maintenance – North Shoal Creek Neighborhood Association will be responsible for the maintenance of community garden, traffic-calming bulb-outs, and the artwork on Steck Bridge for the life of the project.

Maintenance will include but is not limited to planting, watering, mulching, trash pickup, graffiti removal and furnishing/installing any necessary materials required to maintain the original project.

**Since maintenance volunteer hours were included as part of the community’s cost match, a summary of maintenance efforts, including recently dated pictures of the project, must be submitted annually for 2 years.

If the project is not properly maintained as deemed by the Director of Public Works or the Director of the Parks and Recreation Department, the City has the authority to remove any component of the project.

Maintenance Responsibilities

Quantity	Unit	Item Description	Responsible Party
300	HRS	Maintenance of community garden	North Shoal Creek Neighborhood Association
208	HRS	Maintenance of bulb-outs	North Shoal Creek Neighborhood Association
		Lifetime maintenance of the community garden, bulb-outs, and artwork on Steck Bridge	North Shoal Creek Neighborhood Association

EXHIBIT "B"
PROJECT COST ESTIMATE AND RESPONSIBLE PARTIES
& COMMUNITY COST MATCH RESPONSIBILITIES

Project Cost Estimate and Responsible Parties
(North Shoal Creek Neighborhood Association will be referred to as NSCNA)

Construction

Quantity	Units	Unit Price	Item Description	Cost Estimate	Responsible Party
Sidewalks					
286	LF	\$100	Thrushwood/McCann	\$28,600	City of Austin
82	LF	\$125	Rockwood (Primrose to Businesses)	\$10,250	City of Austin
140	LF	\$100	Penny Lane	\$14,000	City of Austin
65	LF	\$110	Crosscreek Rd	\$7,150	City of Austin
Garden					
1	LS	\$1,500	Water Tap Plan	\$1,500	City of Austin
2	Each	\$175	Benches - 2 limestone boulders	\$350	NSCNA
1	Each	\$300	Compost bin 7 cubic feet	\$300	NSCNA
1	Each	\$600	Irrigation	\$600	NSCNA
1	Each	\$25	Fertilizer	\$25	NSCNA
1	Load	\$350	Mulch	\$350	NSCNA
1	Each	\$313	Shed w/ Pavers	\$313	NSCNA
1	Each	\$50	Sign for Garden	\$50	NSCNA
1	Load	\$7,000	Soil	\$7,000	NSCNA
4	per/day	\$140	Truck Rental	\$560	NSCNA
3	Each	\$75	Weed Barrier	\$225	NSCNA
7	Hours	\$25.11	Garden Design	\$176	NSCNA
6	Each	\$50	Pillow donating their native plants	\$300	NSCNA
1	LS	\$250	Tools	\$250	NSCNA
1	LS	\$3,500	Fence + 2 gates (Materials)	\$3,500	City of Austin
22	Each	\$52	Cedar lumber for beds	\$1,144	NSCNA
250	Hours	\$25	Site prep for gardens & landscaping	\$6,278	NSCNA
250	Hours	\$25	Build beds, install fence, till soil	\$6,278	NSCNA
Bulb-Outs					
22	1 cu yrd	\$40	Mulch + Compost + Delivery	\$880	City of Austin
6	Plant	\$180	Variety plants covering 200 sq ft x 6	\$1,080	City of Austin
2	per day	\$70	Tiller each for two days	\$140	NSCNA

6	per day	\$10	Wheelbarrow each for two days (3 for 2 days)	\$60	NSCNA
2	per day	\$30	Equipment Trailer (1 for 2 days)	\$60	NSCNA
60	Hours	\$25	10 hrs/bulb-out - prep, till and plant	\$1,507	NSCNA
			Steck Bridge		
54	/sq ft	\$50	Tile and glass	\$2,700	NSCNA
1	Each	\$7	MAPEI Keraflor 50-lb r Dry- Thinset Mortar	\$7	NSCNA
1	Each	\$15	MAPEI Keracolor S 25-lb Grout	\$15	NSCNA
1	Each	\$30	Tile Sealer	\$30	NSCNA
10	Hours	\$25	Mosaic consultants	\$250	NSCNA
1	Week	\$200	Tile Saw	\$200	NSCNA
1	LS	\$300	Various (gloves, paper towels, safety goggles, tarps, dust masks, painter's tape, plastic bins, mixing buckets	\$300	NSCNA
2	Each	\$7	Primer	\$14	NSCNA
2	Each	\$7	Paint	\$14	NSCNA
135	Hours	\$25.11	2.5 hrs/ sq foot to prep	\$3,390	NSCNA
30	Hours	\$25.11	30 hours to set mosaic	\$753	NSCNA
8	Hours	\$25.11	Scrub rust off rails, primer, \$ paint	\$201	NSCNA

Contingency

Quantity	Units	Unit Price	Item Description	Cost Estimate	Responsible Party
0.3	LS	\$66,960	30% Contingency - Applies to all City of Austin Project Costs	\$20,088	City of Austin

\$ 100,798	Construction
\$ 20,088	Contingency
\$ 120,887	Project Total Cost

Community Cost Match

In-Kind Professional Services

Quantity	Units	Unit Price	Item Description	Cost Estimate	Responsible Party
			Garden		
7	Hours	\$25	Garden Design	\$176	NSCNA
10	Hours	\$25	Mosaic consultants	\$250	NSCNA

Total \$426

In-Kind Materials

Quantity	Units	Unit Price	Item Description	Cost Estimate	Responsible Party
			Garden		
2	Each	\$175	Benches - 2 limestone boulders	\$350	NSCNA
1	Each	\$300	Compost bin 7 cubic feet	\$300	NSCNA
1	Each	\$600	Irrigation	\$600	NSCNA
1	Each	\$25	Fertilizer	\$25	NSCNA
1	Load	\$350	Mulch	\$350	NSCNA
1	Each	\$313	Shed w/ Pavers	\$313	NSCNA
1	Each	\$50	Sign for Garden	\$50	NSCNA
1	Load	\$7,000	Soil	\$7,000	NSCNA
4	per/day	\$140	Truck Rental	\$560	NSCNA
3	Each	\$75	Weed Barrier	\$225	NSCNA
6	Each	\$50	Pillow donating their native plants	\$300	NSCNA
1	LS	\$250	Tools	\$250	NSCNA
22	Each	\$52	Cedar lumber for beds	\$1,144	NSCNA
			Bulb-Outs		
2	per day	\$70	Tiller each for two days	\$140	NSCNA
6	per day	\$10	Wheelbarrow each for two days (3 for 2 days)	\$60	NSCNA
2	per day	\$30	Equipment Trailer (1 for 2 days)	\$60	NSCNA
			Steck Bridge		
54	/sq ft	\$50	Tile and glass	\$2,700	NSCNA
1	Each	\$7	MAPEI Keraflor 50-lb r Dry-Thinset Mortar	\$7	NSCNA
1	Each	\$15	MAPEI Keracolor S 25-lb Grout	\$15	NSCNA
1	Each	\$30	Tile Sealer	\$30	NSCNA
1	Week	\$200	Tile Saw	\$200	NSCNA

1	LS	\$300	Various (gloves, paper towels, safety goggles, tarps, dust masks, painter's tape, plastic bins, mixing buckets)	\$300	NSCNA
2	Each	\$7	Primer	\$14	NSCNA
2	Each	\$7	Paint	\$14	NSCNA

Total \$15,007

Volunteer Hours

Quantity	Units	Unit Price	Item Description	Cost Estimate	Responsible Party
			Garden		
250	Hours	\$25.11	Site prep for gardens & landscaping	\$6,278	NSCNA
250	Hours	\$25.11	Build beds, install fence, till soil	\$6,278	NSCNA
300	Hours	\$25.11	Maintenance	\$7,533	NSCNA
			Bulb-Outs		
60	Hours	\$25.11	10 hrs/bulb-out - prep, till and plant	\$1,507	NSCNA
208	Hours	\$25.11	Maintenance (2 hrs per week for 2 years)	\$2,511	NSCNA
			Steck Bridge		
135	Hours	\$25.11	2.5 hrs/sq foot to prep	\$3,390	NSCNA
30	Hours	\$25.11	30 hours to set mosaic	\$753	NSCNA
8	Hours	\$25.11	Scrub rust off rails, primer, \$ paint	\$201	NSCNA

Total \$28,450

\$-	NSCNA Cash Match
\$426	NSCNA Prof. Services
\$15,007	NSCNA In-Kind Materials
\$28,450	NSCNA Volunteer Hours
\$43,883	NSCNA Total Match
\$87,048	City of Austin Costs
30%	Required Cost Share %
36%	Actual Cost Share %

EXHIBIT "C"
NEIGHBORHOOD PARTICIPATION PROGRAM
LIABILITY WAIVER AND RELEASE

PROJECT: North Shoal Creek Beautification, Garden and Sidewalks (the "Project").

The undersigned Volunteer hereby makes the following representations and acknowledgements in connection with this Waiver and Release:

My legal name is set forth below. I reside at the address set forth below. I am over the age of 18 years and I can read the English language. If I am under the age of 18 years, this Waiver and Release must be executed by my parent or guardian.

I am currently volunteering to provide labor or other services on or for the Project. I understand that the Project may involve landscaping, maintenance, and other related activities and that I have the duty to prevent accidents and comply with the Project's safety precautions and programs.

I hereby release the City of Austin, Texas, from any and all liability for personal injury or death or property damage, arising out of or connected in any way to the landscaping, maintenance, or other related activities to be undertaken by me or on my behalf for the Project. I also waive any and all claims that may be asserted against the City by me or on my behalf related to any personal injury, death or property damage, arising out of or connected in any way to the landscaping, maintenance or other related activities to be undertaken by me or on my behalf for the Project.

I have read and understand this Waiver and Release and I have executed this Waiver and Release of my free will and with personal knowledge of the facts set forth herein. I understand and agree that the City of Austin, Texas, is relying on this Waiver and Release with respect to the Project in awarding the Project for the benefit of the City of Austin.

If this waiver and release is executed on behalf of a minor by a parent or guardian, it will serve and operate as a waiver and release of any liability for or claims of the minor child named below and his/her parents or guardians.

Volunteer:

Printed Name: _____

Signature: _____

Relationship: Self or Parent/Guardian (Circle One)

Address: _____

Date: _____, 201_.