

# **Funding & Volunteer Landscaping, Maintenance, and Related Services**

## **NEIGHBORHOOD COST PARTICIPATION AGREEMENT CITY OF AUSTIN AND ADELPHI ACRES COMMUNITY GARDEN**

**STATE OF TEXAS**

**COUNTY OF TRAVIS**

This Agreement is made and entered into by and between the City of Austin, Texas (the "City") and Adelphi Acres Community Garden (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 Partner agrees to and shall indemnify, defend and hold the City, its consultants and contractors and their respective officers, directors, partners, employees, and agents (the "INDEMNIFIED PARTIES") harmless from and against any and all claims, costs, losses, damages, and causes of action, including attorney's fees and costs of court, for personal injury, death or property damage arising out of or connected to any activities undertaken by the Partner or its Volunteers in connection with this Agreement to the extent such injury, death or damage is caused in whole or in part by any negligent act or omission of the Partner, its officers, directors, or Volunteers, regardless of whether or not caused in part by any negligence or omission of the INDEMNIFIED PARTIES hereunder or whether liability is imposed upon such INDEMNIFIED PARTY by laws and regulations regardless of the negligence of any such person or entity.**
- (b) 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.
- (c) 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 is currently estimated at \$99,447.00, including a construction contingency amount of \$3,070.00.

- (b) The Partner's share, which is based on providing funding and/or Volunteer services with an agreed-to value, is forty-nine percent (49%) of the cost of the Project. The City's share is fifty-one percent (51%) of the cost of the Project.
  - (c) To the extent applicable, within 30 days of the execution of this Agreement, the Partner will pay the City the amount of \$310.00.
  - (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 percentages.
  - (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 900  
Austin, Texas 78704  
Attention: Justin Golbabai, Program Manager

**PARTNER:** Adelphi Acres Community Garden  
12006 Scribe Drive  
Austin, Texas 78759

- (c) **Number and Gender Defined.** As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter 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: HOWARD S. LAZARUS

Title: PUBLIC WORKS DIRECTOR  
Authorized Representative

Date: 8/4/14

ADELPHI ACRES COMMUNITY GARDEN

By: 

Name: Sabrina S. Joplin

Title: Garden Chair  
Authorized Representative

Date: 08/01/14

**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:

<b>Project Type</b>	<b>Cost Range for Total Project Cost</b>	<b>Neighborhood Share Portion</b>	<b>City Share Portion</b>
Small	\$75,000 or less	40%	60%
Medium	\$75,000-\$150,000	25%	75%
Large	\$150,000-\$500,000	50%	50%
GAP	Case by case	50%	50%

The Adelphi Acre Community Garden submitted a qualified application to install a community garden on City of Austin right-of-way. The property is owned by the City of Austin-Public Works Department.

The Project is located at 3701½ Adelphi Lane, Austin TX.

**II. Project Cost Share** –Adelphi Acre Community Garden will meet its cost share through Volunteer Hours, Cash donation, Donations of Professional Services, and In-kind Donations.

Table 2: Project Cost share estimate  
Project Type: **MEDIUM (\$75,000-\$150,000)**

<b>Item</b>	<b>Estimate</b>
Design	\$3,079
Site Preparation	\$6,421
Construction	\$60,944
Contingency	\$3,070
Maintenance	\$25,933
<i>Project Total Cost</i>	<i>\$99,898</i>
COA Total	\$51,482
Adelphi Acres	\$47,965
Required Cost Share %	25%
Actual Cost Share %	49%

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** – The Adelphi Acres Community Garden will include:

- Design and installation of irrigation and water meter for the garden
- Garden site including fence, granite pathways, tool shed, and rain barrels

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, Parks and Recreation Department, and/or through outside contracting, and from volunteer labor from the Adelphi Acre Community Garden. The City of Austin project manager has the responsibility for project implementation, management, and completion.

**IV. Maintenance** – Adelphi Acres Community Garden will be responsible for the maintenance of the project area for the life of the project.

Maintenance will include but is not limited to trash pickup, watering, trimming and upkeep of plantings, graffiti removal, and furnishing/installing any necessary materials required to maintain the original project, such as fencing, irrigation materials, lumber, crushed granite, etc.

If 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, the City has the authority to remove any component of the project.

Maintenance responsibilities

Quantity	Unit	Item Description	Responsible Party
1,169	Hrs	Maintenance Hours (12 Hours per year per Plot Holder General Maintenance for 2 Years)	Adelphi Acres
		Maintenance for Life of Garden	Adelphi Acres



**EXHIBIT "B"**

**COST ESTIMATE AND RESPONSIBLE PARTIES**

**Design**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
72	Hrs	\$32.10	Landscape Design (Professional Services)	\$2,311	Adelphi Acres
34	Hrs	\$22.57	G.I.S. Analysis (Professional Services)	\$767	Adelphi Acres

**Site Preparation**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
156	Hrs	\$22.57	Work Day Labor Hours	\$3,521	Adelphi Acres
1	LS	\$2,900	Arborist In-Kind Donation: Removal of dead trees, raise canopies to provide better pedestrian clearance and park visibility, thin canopies and remove deadwood inch in diameter and larger. (Professional Services)	\$2,900	Adelphi Acres

**Construction**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
1,040	LF	\$15	Underground Irrigation System	\$15,600	City of Austin
20	Ea	\$5	Hose Bib Installation	\$100	City of Austin
1	LS	\$5,000	Furnish and Deliver Pavilion/Tool Shed (10' x 12')	\$5,000	City of Austin
4	EA	\$500	Gates	\$2,000	City of Austin
3	Rolls	\$416	Horse Fence Rolls (8' x 330')	\$1,248	City of Austin
1	LS	\$300	Rabbit Fencing	\$300	City of Austin
75	EA	\$11	10' T Posts for Fence	\$825	City of Austin
40	EA	\$35	12' Metal Pole 1.5" diameter	\$1,400	City of Austin
100	EA	\$3	Concrete	\$325	City of Austin
1		\$300	Compost Area Fencing	\$300	City of Austin
22	CY	\$36	Decomposed Crushed Granite (2342 sq ft x 3")	\$792	City of Austin
1	LS	\$85	Furnish and Deliver materials for Bulletin Board	\$85	City of Austin
150	CY	\$38	Furnish and Deliver Soil for Raised Beds	\$5,733	City of Austin
56	CY	\$28	Furnish and Deliver Compost for Raised Beds	\$1,565	City of Austin
40	CY	\$8	Furnish and Deliver Woodchips/Mulch	\$300	City of Austin
1	LS	\$500	Furnish and Deliver materials for Sign for Garden Entrance	\$500	City of Austin

1	LS	\$345	Furnish and Deliver Weed Barrier for Paths	\$345	City of Austin
123	EA	\$26	Furnish and Deliver Lumber to Build Raised Beds (2"x16"x12')	\$3,198	City of Austin
43	EA	\$10	Furnish and Deliver Lumber to Build Raised Beds (2"x4"x16')	\$430	City of Austin
40	EA	\$16	Furnish and Deliver Lumber to Build Raised Beds (2"x16"x10')	\$640	City of Austin
1	LS	\$700	Furnish and Deliver Galvanized Screws for Raised Beds	\$700	City of Austin
1	LS	\$3,000	TAP 12" Line and install about 30 LF of HDPE	\$3,000	City of Austin
1	LS	\$2,300	Furnish and Install Meter Box, Back Flow Preventer; Complete and In Place	\$2,300	City of Austin
120	SY	\$5	Furnish and Install Sodding All Types	\$600	City of Austin
1	LS	\$100	Furnish, Install, Maintain, and Remove Filter Curb Inlet Protection (Existing Inlet)	\$100	City of Austin
1	LS	\$700	Furnish, Install, Maintain, and Remove Barricades, Signs, and Traffic Handling	\$700	City of Austin
6,700	EA	\$0	Mobilization	\$536	City of Austin
1	LS	\$100	License Agreement Application Fee	\$100	City of Austin
5	Hrs	\$23	Build and Install Bulletin Board	\$113	Adelphi Acres
100	Hrs	\$23	Build and Install Raised Beds	\$2,257	Adelphi Acres
48	TON	\$156	Furnish, Deliver, and Install Limestone Rocks (tons) (In-Kind)	\$7,500	Adelphi Acres
2	Truck Loads	\$50	Furnish and Install Mulch (8 yards <sup>3</sup> ) (In-Kind)	\$100	Adelphi Acres
2	Truck Loads	\$36	Mulch Delivery (In-Kind)	\$71	Adelphi Acres
2	Barrel	\$75	Furnish and Install Rain Barrel (In-Kind)	\$150	Adelphi Acres
20	Hrs	\$23	Install Weed Barrier for Paths	\$451	Adelphi Acres
20	Hrs	\$23	Build and Install Sign for Garden Entrance	\$451	Adelphi Acres
10	Hrs	\$23	Install Woodchips/Mulch	\$226	Adelphi Acres
10	Hrs	\$23	Install Compost for Raised Beds	\$226	Adelphi Acres
10	Hrs	\$23	Install Soil for Raised Beds	\$226	Adelphi Acres
20	Hrs	\$23	Build and Install Pavilion/Tool Shed (10' x 12')	\$451	Adelphi Acres

**Other Construction Costs**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
1	LS		Construction Contingency	\$3,070	City of Austin

**Maintenance**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
1149	Hrs	\$22.57	Maintenance Hours (12 Hours per year per Plot Holder General Maintenance for 2 Years)	\$25,933	Adelphi Acres
			Maintenance for Life of Garden	\$ -	Adelphi Acres

**Cash Match (Not Included In Project Total)**

Quantity	Unit	Unit Price	Item Description	Total	Responsible Party
1	LS	\$310	Cash Match	\$310	Adelphi Acres

\*Above costs are estimated. Responsible Party will be responsible for 100% of actual costs incurred.

**EXHIBIT "C"**

**NEIGHBORHOOD PARTICIPATION PROGRAM  
LIABILITY WAIVER AND RELEASE**

**PROJECT: Adelphi Acres Community Garden Project (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\_.