

File - Dallas Htg Village/OK City/PK
multi-yr agreement
(cred file)

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

SUPPLEMENTAL AGREEMENT NO. 1
TO MANAGEMENT AND OPERATION
AGREEMENT FOR OLD CITY PARK

THIS SUPPLEMENTAL AGREEMENT NO. 1 to that certain Contract, dated May 26, 1993 ("the Agreement"), by and between the CITY OF DALLAS, a Texas municipal corporation, hereinafter called "City," and DALLAS COUNTY HERITAGE SOCIETY, d/b/a Old City Park, a Texas non-profit corporation, with offices at 1515 South Harwood, Dallas, Texas 75215, hereinafter called the "Society," evidences the following:

1. The Contract is amended to add new Section 12A, entitled "EXPANSION OF DALLAS HERITAGE VILLAGE," as follows:

"12A. EXPANSION OF DALLAS HERITAGE VILLAGE

A. DESCRIPTION OF THE PROJECT. The expansion of Dallas Heritage Village (hereinafter called the "Expansion Project"), anticipated to consist of two separate phases, is further described in the Society's Scope of Work letter dated November 1, 2007, attached to and made a part of this Supplemental Agreement No. 1 as Exhibit D. The Society agrees to have the Expansion Project developed in accordance with Exhibit D and the plans and designs approved by the Park and Recreation Board as part of the Master Plan for Old City Park on June 15, 2006.

B. COST PARTICIPATION.

(1) In consideration of the mutual promises, covenants, and conditions agreed to in this Section, City and the Society agree that joint participation in the Expansion Project shall be allocated on a 60% City - 40% Society basis, using the estimated design and construction cost of the Expansion Project. City's participation in the Expansion Project shall be an amount not to exceed \$949,688.68, based upon the availability of existing City bond funds. Subject to Subsection F below, the Society's participation shall be in the amount of \$649,910.32. The amount of \$177,007 in architectural planning, conceptual design, surveying, and civil engineering fees expended by the Society in the course of developing the Expansion Project will be credited against the Society's participation obligation under this Agreement. City's funds shall be solely used to pay for construction of the Expansion Project and for no other purpose.

(2) City shall not be required to fund award of any construction contract for the Expansion Project unless and until the Society can verify in writing that it has on hand in cash in their bank account (or in an appropriate funded loan account), the amount of the Society's required participation under this Agreement, less the amount previously credited to the Society's obligation but subject to Subsection F below. If multiple construction contracts are to be awarded, the amount of the

Society's required participation will be a proportion, on the basis of the ratio of the cost sharing as established in Subsection B(1) above, of the cost of the particular construction contract to be awarded, less amounts previously credited to the Society's obligation but subject to Subsection F below. The Society shall submit its required participation amount to City within ten (10) days after receipt of written notice from City of its intent to award and assign the construction contract or contracts for the Expansion Project.

(3) In regard to the public art work included in Exhibit D, all public art work to be performed in connection with the Expansion Project shall be subject to City's Public Art ordinance, the Cultural Arts Policy, and the review and approval of the artist selection process and public art designs, plans, and specifications by the Directors of the Office of Cultural Affairs and Public Works and Transportation.

C. DESIGN OF THE EXPANSION PROJECT.

(1) The Society agrees to perform, or hire a registered professional architectural, engineering, or other professional consulting firm to perform all architectural or engineering work related to the Expansion Project improvements, including preliminary design, field survey, right-of-way alignment, estimates, construction plans and specifications and environmental assessments, along with other customary architectural and engineering services necessary to meet City's requirements for the Expansion Project (the "Design Work"). All design, architecture, engineering, construction staking, and materials testing shall be the sole responsibility of the Society and may be paid out of the Society's participation obligation. The plans and specifications shall include City's General Conditions of Building Construction, 6/25/07 Edition, as may be modified by special provisions approved by City. The Society agrees to provide City with a copy of the construction plans and specifications in a form acceptable to the City's Director of Public Works and Transportation (the "Director"), so that the City may prepare public bids for each phase or portion of construction of the Expansion Project improvements City is participating in.

(2) All designs, documents, plans, specifications, maps, estimates, reports, information and other related items developed in connection with the Expansion Project improvements shall become the sole property of City, without restriction on future use. The Society, its hired architectural, engineering, or other consulting firms may make copies of such plans and specifications for their files. Neither the Society nor its hired architectural, engineering, or other consulting firms shall have any liability for changes made to or use of the drawings, plans, and specifications, and other documents by other architects, engineers, or consultants subsequent to the completion of the Expansion Project. City shall require that any such change or other use shall be sealed by the subsequent architect, engineer, or consultant making that change or use and shall be appropriately marked to reflect what was changed or modified.

(3) The Society shall be solely responsible for payment of all fees and costs to provide the Design Work for the Expansion Project improvements and may pay such fees and costs out of its participation obligation. The Society shall contractually require any architectural, engineering, or other consulting firm it hires to agree that the firm shall look solely and exclusively to the Society for payment of fees for Design Work and shall make no claim whatsoever against City in connection with the Expansion Project. The Society also agrees that it will cause its architectural, engineering, or other consulting firm to make its design development decisions consistent with the agreed upon scope of the Expansion Project and on the basis of the amount of the City's \$949,688.68 funding participation limit. Finally, the Society shall contractually require its architectural, engineering, or other consulting firms to agree, in consideration of the payment of their fee, to convey, transfer and assign, or to cause the firm to convey, transfer and assign, to City, all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights, and all other intellectual property rights acknowledged by law in the Expansion Project designs and other Expansion Project deliverables developed.

D. SOCIETY AS CONSTRUCTION MANAGER.

(1) City shall bid the construction contract for the Expansion Project improvements City is participating in, award the contract to the lowest responsible bidder, and assign the construction contract to the Society, as City's construction manager, for the purposes of inspection, supervision, testing, quality control, approval of shop drawings, utility coordination, obtaining utility clearances from all utility companies, staging and coordinating all utility-related work with the construction contractor, general coordination, and completion of all construction work. The Society may fulfill its construction management obligations under this Subsection by subcontracting with a construction management firm that is experienced and qualified in similar types of projects and is otherwise acceptable to City. City shall look to the Society in its capacity as construction manager to ensure that the Expansion Project improvements are completed in a timely manner, in accordance with the contract documents, including all plans and specifications approved by City.

(2) The Society shall review and certify as correct, following the Expansion Project Manager's review and approval, all monthly and final payment requests and forward same to the Director for review and subsequent processing through the City's Department of Public Works and Transportation with such supporting documentation as the Director may reasonably require. All payments for construction work performed under the construction contract shall be made by City to the construction contractor from the funds appropriated for that purpose. City shall not make any payment under a monthly or final estimate unless the Society has certified, by affidavit sworn to by the corporate official or employee duly authorized to submit same, that the estimate of work completed for the period in question is true and correct to the best of his information and belief, has been measured and verified in accordance with the contract documents, and that

all contract preconditions to payment have been met. City reserves the right to perform inspections, measurements or verifications of the estimates or work quantities as are necessary. Final payment to the construction contractor shall not be made until all preconditions to final payment set forth in the construction contract have been performed, and all Expansion Project improvements have been finally completed (as verified by the Society, the Expansion Project Manager, and the Director) in accordance with the approved contract documents, including the plans and specifications, and acceptance by the Director.

E. TRADITIONAL MANAGEMENT SERVICES; BONDS. In addition to the requirements of subsection D above, the Society shall, following City's assignment of the construction contract, perform the usual and necessary traditional construction management services incident to construction projects of the nature and scope of the Expansion Project. The construction specifications shall further require the contractor to furnish performance and payment bonds executed by the contractor and at least one corporate surety authorized to do business in the State of Texas and having a resident agent in Dallas County, Texas, for delivery of notice and service of process, and complying with the requirements of Chapter 2253, Texas Government Code, as amended. The performance and payment bonds (the "Bonds") shall be in the forms attached hereto, marked Exhibit E, and made a part hereof (the "Bond Forms"), which bonds guarantee the completion of the Expansion Project improvements in accordance with the terms and specifications approved by the City. The Bonds shall name the City and the Society as joint obligees. The Society shall thoroughly inspect the work of the assigned contractor to insure there are no defects and nonconformities in the Expansion Project improvements, without assuming responsibilities for means and methods used by the assigned contractor.

F. CLAIMS AND COST OVERRUNS; UNSPENT FUNDS.

(1) The Society acknowledges and agrees that City's participation obligation on the Expansion Project is absolutely limited to \$949,688.68, unless City obtains additional funding for the Expansion Project through a new bond issue approved at an election of City's voters, appropriation of such funding by the City Council, and a future Supplemental Agreement laying out any conditions of additional funding participation by City. All Expansion Project costs and all costs of construction work in excess of the \$949,688.68 funding limit will be the sole responsibility of the Society. In addition, the Society shall fully and completely resolve, by litigation or otherwise, any claims (including utility damage and delay claims as a result of utility work) of the assigned contractor or any other person or entity arising out of performance of the Expansion Project construction contract without involving City, and without any reimbursement from City if the funding required to pay the claim would cause the total cost of City's participation to exceed the \$949,688.68 funding limit, unless such claim results from a material breach by City in the performance of the terms of Supplemental Agreement No. 1 to this Contract (without waiving any sovereign, governmental immunity of City in that regard) or unless City obtains additional bond funding as described above.

City reserves the right, upon reasonable notice and at City's sole election, to make a reasonable audit of all books, records, accounts, and other data of the assigned contractor and the Society relating to the Expansion Project and the performance of the Expansion Project construction contractor or the Society.

(2) If the bids for construction result in an award that is below the estimated design and construction cost for the Expansion Project, thereby leaving excess City participation funds, the City Council may in its sole discretion allow those excess funds, subject to the not to exceed limit of City funding participation as stated in Subsection B(1), to be used for Society-requested change orders and upgrades related to the Expansion Project.

G. INDEMNITY AND INSURANCE. The Society shall require its hired architectural, engineering, and other consulting firms, including but not limited to any construction manager hired by the Society, to name both the Society and City as additional insureds on each firm's commercial general liability and automobile liability policies. The Society shall also require such firms to provide waivers of subrogation as to both the Society and City. Finally, the Society shall require such firms to indemnify and hold harmless the Society and City from any loss or damage arising out of or occasioned by the negligence or fault of those firms, in a form acceptable to City and in compliance with the express negligence rule established under Texas law.

H. DURING CONSTRUCTION. During construction, the Society shall be responsible for obtaining timely repair, replacement, or correction, to the reasonable satisfaction of City, of all damage caused to City's property or facilities or the property or facilities of other persons in the course of construction of the Expansion Project improvements. The cost of repair, replacement, or correction shall be borne by the Society. The Society may look to the construction contractor, or any construction manager hired by the Society to perform the management of the Expansion Project construction, or other party, as may be found responsible for the damage, to reimburse the Society for or make any such repair, replacement, or correction, but shall not under any circumstances charge City for the costs of such repair, replacement, or correction. Emergency repairs, replacements, or corrections made by City to its property or the property of others shall be reimbursed by the Society to City.

I. FINAL COMPLETION. Upon final completion of all construction and final acceptance by City, fee simple title to the Expansion Project improvements shall vest in and belong to City, free and clear of all liens and encumbrances, subject to the Society's right to use and occupancy pursuant to the terms and conditions of the Contract, as amended. The Society agrees to do nothing before or during construction that would prejudice City's ability to secure clear title to the Expansion Project improvements upon final completion. All rights under construction warranties shall be assigned back to City. In addition, upon final completion the Society shall submit to City at least two sets each of the following as-built record documents, drawings, and specifications for the Expansion Project

("as-builts") in the following formats: (i) CD-ROMs containing the as-builts in PDF format; (ii) CD-ROMs containing the as-builts in AutoCad format; (iii) mylar prints of the as-builts; and (iv) paper prints of the as-builts.

J. MAINTENANCE AND OPERATION AFTER FINAL COMPLETION. The Society shall be responsible for maintaining and operating the Expansion Project after final completion in accordance with and subject to all applicable terms of the Contract, as amended."

2. The Contract is amended to add Paragraph 33 as follows:

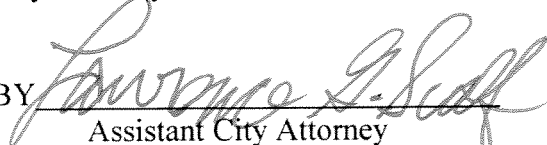

"33. NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims."

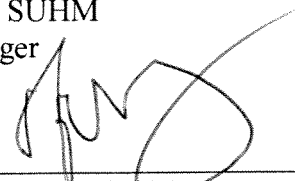
3. All other terms, provisions, conditions, and obligations of the Contract between City and the Society shall remain in full force and effect, and said Contract, as same may have been previously amended, and this Supplemental Agreement No. 1 shall be construed together as a single contractual agreement.

EXECUTED this the 27 day of FEB, 2008, by City, signing by and through its City Manager, duly authorized to execute same by Resolution No. 08- 0668, adopted by the City Council on February 27, 2008, and by the Society, acting through its duly authorized officials.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

BY 
Assistant City Attorney
Submitted to City Attorney


CITY OF DALLAS
MARY K. SUHM
City Manager

BY 
Assistant City Manager

ATTEST:

DALLAS COUNTY HERITAGE
SOCIETY, d/b/a OLD CITY PARK

BY _____
Corporate Secretary

BY 
President



ARCHITEXAS

Architecture, Planning and Historic Preservation, Inc.

EXHIBIT D SCOPE OF WORK LETTER

November 1, 2007

Wade Ellison
Senior Architect
Public Works & Transportation
320 East Jefferson #321
Dallas Texas 75203

Re: Dallas Heritage Village

The following is a scope of work for the Dallas Heritage Village project, Phase I:

1. Power Line Relocation under Gano
 - a. Installation of new duct banks under Gano between Harwood and St. Paul Street, transformer and switch gear pad, and manhole access;
 - b. Installation of new underground duct banks to future Visitor & Education Center and Theatre;
 - c. Provide underground electric, cable and telephone installation;
 - d. Removal of all utility existing poles.
2. New Concrete Drive between Harwood & Park Avenue
 - a. Relocation of Fire Hydrant at Gano and Park;
 - b. Raise all existing manholes to new surface levels;
 - c. Install bus drop off curb, paving, sidewalk, and retaining wall;
 - d. New Drive between Harwood and Park Avenue.
3. Curb Cuts & Parking Approach
4. Parking Lot
 - a. New 90 space concrete parking lot with accessible parking, sidewalks, wheel stops, and landscaping
5. New Plaza
 - a. Provide Plaza - 4'x4' concrete pavers on compacted sand bed;
 - b. Install Shallow water feature;
 - c. Restoration and relocation of existing historic water trough artefact,
 - d. Install stone benches.

6. South Ervay Maintenance Entry
 - a. Provide new delivery entrance off Ervay Street into Park;
 - b. Provide a new Electronic Gate with remote access on Park Avenue.
7. Provide Irrigation & Landscaping
8. Install Public Art
9. Provide new asphalt top for Park Avenue

The cost estimate for Phase I is as follows:

Power Line Relocation under Gano	\$478,307
New Concrete Drive between Harwood & Park Avenue	\$146,921
Curb Cuts & Parking Approach	\$ 5,181
Parking Lot	\$328,378
New Plaza	\$293,708
South Ervay Maintenance Entry	\$ 30,274
Irrigation & Landscaping	\$ 18,144
Public Art (1.5% of bond)	\$ 15,000
New Asphalt top for Park Avenue	\$ 26,155
Subtotal	\$1,342,068
Escalation	\$ 80,524
Construction Total	\$1,422,592
Architectural/Engineering Fees Paid to Date	\$174,107
Geotech Report	\$ 2,900
Total	\$1,599,599

Phase II will include:

1. New turn lane, entry signage and landscaping at the Harwood entrance
2. New brick pavers on Park Avenue north of the new Public Plaza
3. New garden in the former Gano Street space between Park and St. Paul
4. New open air Children's Theater
5. New Visitor & Education Center
6. Modifications to the existing wrought iron fence and stone wall to enclose the entire property
7. New signature gate at the Harwood Entrance
8. Site lighting

The construction of Phase II will not be in the bond package and will be bid privately. Phase II construction is estimated at \$2,620,000.