

Controller's Office

To the Honorable Mayor and City Council of the City of Houston, Texas:

I hereby certify, with respect to the money required for the contract, agreement, obligation or expenditure contemplated by the ordinance set out below that:

() Funds have been encumbered out of funds previously appropriated for such purpose.

() Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.

() Funds will be available out of current or general revenue prior to the maturity of any such obligation.

() No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.

() The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.

() A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.

() Other - Grant Funds Available

C. B. Brown
Jerald Poll

Date: 10-20, 2020

City Controller of the City of Houston, Texas

mf

SCC. FUND REF: RC 071863 2020-910 AMOUNT: ENCUMB. NO. RF 36038-21

Q

AN ORDINANCE APPROVING AND AUTHORIZING A FIRST AMENDMENT TO THE DEVELOPMENT AND CONSTRUCTION AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, THE ASTROS GOLF FOUNDATION, AND MEMORIAL PARK CONSERVANCY, INC. RELATING TO MEMORIAL PARK GOLF COURSE; CONTAINING FINDINGS AND PROVISIONS RELATED TO THE FOREGOING SUBJECT; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City owns Memorial Park, a public park consisting of approximately 1,464

acres generally located between Interstate Highway 10, Interstate Highway 610, Buffalo Bayou, and Crestwood Drive ("Park"); and

WHEREAS, by Ordinance No. 2019-0025, passed and approved by the City Council of the City on January 9, 2019, the City, the Astros Golf Foundation ("Foundation") and the Memorial Park Conservancy entered into that certain Development and Construction Agreement Relating to Memorial Park Golf Course ("Development Agreement"), dated effective January 14, 2019, for the purpose of setting forth the terms and conditions for development and construction by the Foundation of certain improvements to the 18-hole golf course located within the Park; and

WHEREAS, it is now necessary to amend the Development Agreement to authorize the development and construction by the Foundation of certain improvements to the Memorial Park Tennis Center and the croquet courts located within the Park; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That the City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this Ordinance, in substantially the form as shown in the document attached hereto as Exhibit "A" and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City. The City Secretary is hereby authorized to attest to all such signatures and to affix the City seal to all such documents.

Section 3. That the City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under such contract, agreement, or other undertaking without further authorization from the City Council.

Section 4. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor, however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 21st day of October, 2020.

APPROVED this _____ day of _____, 2020.

Mayor of the City of Houston, Texas

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is OCT 27 2020.

Pat J. Harniel
 City Secretary

(Prepared by Legal Dept. Mary Buzick)
 (MFB/mfb July 13, 2020) Senior Assistant City Attorney
 (Requested by Steve Wright, Director, Houston Parks and Recreation Department)
 (L.D. File No. 0421800096005)

AYE	NO	
✓		MAYOR TURNER
••••	••••	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT
 REVIEW
 DATE: OCT 27 2020

EXHIBIT "A"

**FIRST AMENDMENT TO DEVELOPMENT AND CONSTRUCTION AGREEMENT
RELATING TO MEMORIAL PARK GOLF COURSE**

THIS FIRST AMENDMENT TO DEVELOPMENT AND CONSTRUCTION AGREEMENT RELATING TO MEMORIAL PARK GOLF COURSE ("**First Amendment**") is made and entered into by and among the **City of Houston, Texas**, a Texas home-rule municipal corporation ("**City**"), the **Astros Golf Foundation**, a Texas nonprofit corporation ("**Foundation**"), and **Memorial Park Conservancy**, a Texas nonprofit corporation ("**MPC**").

RECITALS

A. The City owns Memorial Park, a public park consisting of approximately 1,464 acres generally located between Interstate Highway 10, Interstate Highway 610, Buffalo Bayou, and Crestwood Drive ("**Park**").

B. By Ordinance No. 2019-0025, passed and approved by the City Council of the City on January 9, 2019, the Parties entered into that certain Development and Construction Agreement Relating to Memorial Park Golf Course ("**Development Agreement**"), dated effective January 14, 2019, for the purpose of setting forth the terms and conditions for development and construction by the Foundation of certain improvements to the Memorial Park Golf Course ("**Course**"), the 18-hole golf course located within the Park.

C. The Parties now desire to amend the Development Agreement to authorize the development and construction by the Foundation of certain improvements to the Memorial Park Tennis Center and the croquet courts located within the Park.

AGREEMENT

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants and undertakings hereunder, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby agree as follows:

1. The recitals set forth above are true and correct and form the basis upon which the Parties have entered into this First Amendment and are hereby incorporated for all purposes.
2. The title of the Development Agreement, as it appears on the title page and on page 1 of the Development Agreement, is hereby amended to read as follows:

Development and Construction Agreement Relating to Memorial
Park Golf Course and Memorial Park Tennis Center

3. Article I of the Development Agreement is hereby deleted in its entirety and replaced with the following:

ARTICLE I

RECITALS

The City owns Memorial Park, a public park consisting of approximately 1,464 acres generally located between Interstate Highway 10, Interstate Highway 610, Buffalo Bayou, and Crestwood Drive ("**Park**"), which includes, among its recreational amenities, (i) an 18-hole golf course (as further defined herein, "**Course**"), (ii) the Memorial Park Tennis Center, a tennis center that includes 18 ½ tennis courts and a tennis shop ("**Tennis Center**") and (iii) two croquet courts (the "**Croquet Courts**").

The Foundation, which was created for the purpose of servicing the charitable needs of the greater Houston metropolitan area, desires to fund, develop and construct certain improvements to the Course, the Tennis Center and the Croquet Courts (as further defined herein, "**Project**") for the benefit of the general public, for the purpose of facilitating the hosting of professional golf tournaments at the Course and for the purpose of improving the quality and the location of the Tennis Center and the Croquet Courts.

The City and MPC, by and among other parties, have entered into that certain Amended and Restated Development, Construction, Operations, Maintenance and Concession Agreement relating to Memorial Park, which was approved by City Ordinance No. 2018-367, passed and adopted on May 2, 2018, and effective as of May 10, 2018 ("**MPC Agreement**").

The MPC Agreement designates the Course as a "Permanently Excluded Area" that is not operated or maintained by MPC but reserves the right of MPC to participate in certain agreements relating to the Course, including specifically agreements relating to the hosting of a professional golf tournament at the Course.

The MPC Agreement designates the lawn and lighting of the Croquet Courts as a "Permanently Excluded Area" that is not operated or maintained by MPC.

The MPC Agreement designates the Tennis Center as a "Temporary Excluded Area" that is not operated or maintained by MPC until replaced by new construction or until such time as agreed between MPC and the City.

The MPC Agreement provides that the Standards Committee (as defined below) has certain rights with respect to review of future development of projects and other enhancements, improvements and facilities involving capital expenditures in the Park, including the Course, the Tennis Center and the Croquet Courts, and that MPC has certain rights and obligations to participate in discussions and negotiations relating to a professional golf tournament to be hosted at the Course.

The Parties desire to set forth the terms and conditions under which they agree to proceed with the development and construction of the Project in accordance with this Agreement and the MPC Agreement.

The Project will provide necessary improvements to the Course, the Tennis Center and the Croquet Courts, and as such, is a public purpose that will provide benefits to the residents of the City.

The City desires to demonstrate its commitment to the hosting of a professional golf tournament at the Course, and the enhancements to the Course that will be provided through the construction of this Project will support the City's efforts to host a professional golf tournament at the Course in partnership with the Foundation and PGA Tour, Inc.

It is the City's desire to work with the other Parties to facilitate the development and construction of the Project in an expeditious manner.

For and in consideration of the mutual promises, covenants, benefits and obligations described herein, **THE PARTIES HEREBY AGREE** to the terms and conditions of this Agreement, as follows:

4. Section 2.01 of the Development Agreement is hereby amended by deleting the definition of "**Project**" and replacing it with the following:

"Project" means the Construction of certain improvements to the Course, the Tennis Center, and the Croquet Courts, including (i) with respect to the Course, the renovation of the Course, the Construction of the maintenance facility, a building designed to serve as a parks and recreation-based educational center providing youth golf, Foundation offices, as well as offices for such programming, and other parks and recreation-based youth programming throughout the year and as a PGA TOUR player clubhouse, and the driving range facility (inclusive of the relocation of the driving range netting associated with the Project), and the development of a First Tee short course, (ii) with respect to the Tennis Center, the demolition of

ten existing tennis courts, the Construction of ten new tennis courts, the topical resurfacing of the 8 ½ existing tennis courts, and the refurbishment of the existing tennis shop, (iii) with respect to the Croquet Courts, the demolition of two existing croquet courts and the Construction of two new croquet courts of equal or better quality than the existing croquet courts and conforming to the specifications of The United States Croquet Association relating to court size and materials, and (iv) if requested by MPC, the relocation of the existing stretching station along the SLT of equal or better size and quality in a location determined by MPC, together with any and all utility and infrastructure improvements necessary for Construction of the Project, all pursuant to and in the location(s) specified in the Plans and Specifications therefor and the scope, budget and schedule attached hereto as **Exhibit B**, as amended from time to time pursuant to this Agreement, subject to review and approval in accordance with the terms and conditions of this Agreement.

5. Exhibit B of the Development Agreement is hereby deleted and replaced with the Amended Exhibit B attached to this First Amendment.
6. The improvements to the Tennis Center and the Croquet Courts, as further described in the definition of "Project" and as further detailed in Exhibit B of the Development Agreement, each as amended herein, are subject to Standards Committee review and approval in the same manner as Peripheral Improvements as defined in the Development Agreement. The Parties acknowledge and agree that, with respect to the improvements to the Tennis Center and the Croquet Courts, the Standards Committee's review and approval process has been completed. Additionally, the Parties acknowledge that the driving range netting for the Course and the Tennis Center may be modified or relocated upon the relocation of Memorial Loop Road and in accordance with a Master Plan project, subject to the approvals set forth in the MPC Agreement.
7. Notwithstanding any provision of the MPC Agreement to the contrary, (i) upon completion of the Croquet Courts component of the Project and transfer of the two new croquet courts to the City in accordance with the provisions of the Development Agreement, the new croquet courts, together with the lawn and lighting, and all associated structures and site furnishings or associated programming, shall be operated and maintained by the City as "Permanently Excluded Areas" under the MPC Agreement, and (ii) upon completion of the Tennis Center component of the Project, all landscaping services for the Tennis Center, including the plazas and adjacent areas therein, shall be provided by the City as "Temporary Excluded Areas" under the MPC Agreement.
8. All capitalized terms in this First Amendment that are not otherwise defined herein shall have the meanings assigned to those terms in the Development Agreement.

9. To the extent there exists a conflict between the terms of the Development Agreement and the terms of this First Amendment, the terms of this First Amendment control.
10. Except as modified by the changes set forth in this First Amendment, all other terms, conditions, and provisions of the Development Agreement shall remain unchanged and in full force and effect.
11. The Parties may execute this First Amendment in multiple copies, each of which is an original. The Parties hereby agree that each Party may sign and deliver this First Amendment electronically or by electronic means and that an electronic transmittal of a signature, including but not limited to, a scanned signature page, will be as good, binding, and effective as an original signature.

[Execution pages follow]

IN WITNESS WHEREOF, this First Amendment has been executed by the Parties and made effective as of the date of countersignature of this First Amendment by the Controller of the City ("Effective Date").

ATTEST:

CITY OF HOUSTON, TEXAS

By: _____
Pat Jefferson-Daniel, Interim City Secretary

By: _____
Sylvester Turner, Mayor

COUNTERSIGNED:

By: _____
Chris B. Brown, Controller

DATE OF COUNTERSIGNATURE:

APPROVED:

By: _____
Andy Icken, Chief Development Officer

APPROVED:

By: _____
James Koski, Deputy Chief of Staff

APPROVED:

By: _____
Steve Wright, Director
Houston Parks and Recreation Department

APPROVED AS TO FORM:

By: _____
Mary Frances Buzak
Senior Assistant City Attorney
LD # 0491800096005

THE FOUNDATION:

ASTROS GOLF FOUNDATION,
A Texas non-profit corporation

By: _____

Name: _____

Title: _____

MPC:

MEMORIAL PARK CONSERVANCY,
A Texas non-profit corporation

By: _____

Name: Steven B. Jenkins

Title: Chairman

Amended Exhibit B Project Scope, Budget and Schedule

Proposed Construction Budget and Schedule for Tennis Center

Demo (12 days)	\$97,000
Soil Stabilization (12 days)	\$117,235
Subgrade Prep (10 days)	\$153,906
Slab Construction w/ Drainage (50 days)	\$614,608
New Court Surface (10 days)	\$74,188
Existing Court Resurface (10 days)	\$59,351
Tennis Equipment	\$24,440
Concrete Pad for Bleachers (10 days)	\$19,586
Bleachers (9 days)	\$118,945
Shade Structure for Bleachers (7 days)	\$59,595
Sidewalk Addition (8 days)	\$54,064
New Fencing w/ Windscreen (14 days)	\$112,583
LED Sports Lighting System (23 days)	\$395,120
Replacement LED Sports Lighting Fixtures (23 days)	\$131,907
Electrical (23 days)	\$67,615
Storm (7 days)	\$37,564
Detention (5 days)	\$12,021
Design & Engineering (60 days)	\$125,000
Survey (10 days)	\$9,440
Geotech (10 days)	\$9,016
Contingency	\$150,000
P&P Bond	\$24,944
Insurance Bond	\$1,800
Mobilization (7 days)	\$2,500
Driving Range Netting (30 days)	\$278,250
Driving Range Construction (14 days)	\$121,453
Croquet Courts Design and Construction (21 days)	\$123,200
Stretching Station Relocation (7 days) (Placeholder)	\$50,000
Tennis Shop Refurbishment (75 days) (Placeholder)	\$850,000
Landscaping (21 days) (Placeholder)	\$25,000
Misc.	\$110,000
TOTAL	\$4,030,331*

*All itemized costs are estimates. Foundation will cover any and all costs over and above proposed budget. Any savings from proposed budget will be designated for improvements to Golf Facilities, as determined by the Foundation.

Demolition and construction start date to be determined by HPARD. Total timeline is 150 days from start date.

Other AGF Projects at Memorial Park

- Memorial Park Golf Course redesign and construction = \$13mm (completed 11/1/19)
- Short Course for kids - design and construction = \$500k (completed 4/15/20)
- 2-Tier Hitting Bays and Driving Range renovation = \$3mm (completed 11/1/19)
- Maintenance Facility design and construction = \$3mm (completed 11/1/19)
- Existing Clubhouse renovation = \$550k (to be completed 10/15/20)
- Educational Center at Memorial Park = \$9mm (to be completed 10/15/20)