

## LINCOLN PARK DONATION AGREEMENT

This Lincoln Park Donation Agreement (the “Agreement”) is made and entered into as of the Effective Date by and among the City of San Antonio, a municipal corporation (the “City”) pursuant to Ordinance No. \_\_\_\_\_ approved on June 22, 2017, the San Antonio Tricentennial Celebration Commission, a Texas public, non-profit corporation (the “Commission”), and Charles C. Butt (the “Donor”). The City, the Commission and the Donor are each referred to herein as a “Party” and collectively as the “Parties.”

### RECITALS

**WHEREAS**, the Commission is organized to assist with planning, developing, identifying potential partners, fundraising, managing and financing projects involved with the City’s Tricentennial Celebration during 2018; and

**WHEREAS**, Lincoln Park is located on the near eastside in Council District 2 and has been a gathering place for families and neighbors for almost 100 years; and

**WHEREAS**, Charles C. Butt is the majority shareholder of HEB, one of America’s largest private companies that serves over 150 communities through over 350 stores located throughout Texas and Mexico, who is recognized as a leading titan in his industry; and

**WHEREAS**, beyond being recognized as a leading titan in his industry, Mr. Butt is also a generous philanthropist who, through his stewardship of the family business, and the thoughtful and deliberate distribution of his charitable dollars, continues to make indelible marks on the community he calls home; and

**WHEREAS**, on May 6, 2017, San Antonio voters approved the 2017 - 2022 Bond Program, consisting of six propositions totaling \$850 Million which included \$1,000,000.00 for improvements at Lincoln Park (the “Project”) , located within Council District 2; and .

**WHEREAS**, Mr. Butt’s previously offered to contribute \$1,000,000.00 to match the Bond funding for Lincoln Park, which contribution will be made to the Commission for the benefit of the City of San Antonio, and will help complete a splash pad in the Park as part of the Project in time for the City’s Tricentennial celebration in May 2018, with completion of the Project to follow in April 2020; and

**WHEREAS**, through the terms of this Agreement, the Donor desires to contribute \$1,000,000.00 (the “Donation”) to the Commission for the benefit of the City to supplement the funds approved in the 2017-2022 Bond Program for improvements to Lincoln Park (the “Project”) located at 2915 E Commerce, San Antonio, Texas in City Council District 2; and

**WHEREAS**, the Parties intend this Agreement to set forth each Party’s responsibilities and obligations in connection with the Donation and its use for the Project; **NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, it is agreed between the parties as follows:

## **I. PURPOSE**

1.1 The Parties have determined that the Donor will provide a donation of \$1,000,000.00 to the Commission for the benefit of the City for planned improvements to Lincoln Park.

## **II. TERM**

2.1 This Agreement shall commence on June 23, 2017 and continue until the Project is completed, at which time this Agreement shall terminate.

## **III. OBLIGATIONS OF THE DONOR**

3.1 The Donor shall contribute to the Commission for the benefit of the City an amount of \$1,000,000.00 to be paid in full no later than 10 days after the effective date of this Agreement, solely for the use by the City in connection with planned improvements to Lincoln Park.

3.2 Contingent on his availability, the Donor may participate in a ground-breaking ceremony or such other presentation announcing the Donation, the date and specifics of which will be determined by the City in consultation with the Donor.

## **IV. OBLIGATIONS OF THE COMMISSION**

4.1 The Commission shall receive the Donation from the Donor and in turn transfer the Donation to the City for the purposes stated above, no later than 10 days after approval of this Agreement by the City Council.

4.2 In coordination with the City, the Commission will provide the Donor with 30 days advance notice of the ceremonies or presentations referenced in Section 3.2 and provide logistical support to the Donor in connection with such activities.

4.4 The Commission will recognize the Donor and his Donation in coordination with the Donor's Communication team, according to mutually agreed upon terms.

## **V. OBLIGATIONS OF THE CITY**

5.1 Upon receipt of the Donation through the Commission, the City will deposit the Donation in the City's account established for the Project and limit use of the Donation to costs associated with the Project.

5.2 Upon request by the Donor or his representative, the City will provide updates on the progress of the Project and the specific use of the Donation in connection therewith, and subject to availability, attend site visits to the location of the Project in Lincoln Park.

5.3 The City will recognize the Donor and the Donation in coordination with the Donor's Communication team, according to mutually agreed upon terms.

## **VI. MEDIA**

6.1 All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior mutual approval in writing of the Parties. Notwithstanding anything herein to the contrary, each Party has the right to publicly disclose this Agreement and its subject matter as required by applicable laws without the prior written approval of the other Parties.

## **VII. NOTICE**

7.1 Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

### **If to the City:**

Mike Frisbie, P.E.  
Director, Transportation & Capital Improvements  
P.O. Box 839966  
San Antonio, Texas 78283-3966

### **If to the Commission:**

San Antonio Tricentennial Commission  
101 S. Santa Rosa  
San Antonio, Texas 78207  
Attention: Edward Benavides, CEO

### **If to the Donor:**

Charles C. Butt

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## **VIII. APPLICABLE LAW**

8.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

8.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **IX. COMPLIANCE WITH LAWS**

9.1 Each party will comply with all applicable federal, state and local laws, rules and regulations which may apply to the performance of their respective obligations under this Agreement.

## **X. AMENDMENTS**

10.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof, shall be effected by an amendment, in writing, executed by the Parties.

## **XI. SEVERABILITY**

11.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XII. LEGAL AUTHORITY**

12.1 The signatories to this Agreement represent, warrant, assure and guarantee that they have full legal authority to execute this Agreement on behalf of the party for which they are signing and to bind such party to all of the terms, conditions, provisions and obligations herein contained.

## **XIII. ENTIRE AGREEMENT**

13.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain all of the terms and

conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the Parties.

**IX. COUNTERPARTS**

9.1 For convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

**THE SAN ANTONIO TRICENTENNIAL  
CELEBRATION COMMISSION**

**CHARLES C. BUTT**

By: \_\_\_\_\_  
**Edward Benavides, CEO**

\_\_\_\_\_

**THE CITY OF SAN ANTONIO**

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney