

**STATE OF TEXAS           §           FIRST AMENDED**  
**§**  
**COUNTY OF BEXAR       §           FUNDING AGREEMENT**

This First Amended Funding Agreement (the "Amendment") is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as "CITY"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2017-\_\_-\_\_-\_\_ passed and approved by the City Council on \_\_\_\_\_2017; **BEXAR COUNTY**, a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by the Bexar County Commissioners Court on \_\_\_\_\_, 2017 (hereafter referred to as "COUNTY"); and by the **SAN ANTONIO BOTANICAL SOCIETY, INC.**, (hereinafter referred to as "GRANTEE"), a Texas Non-Profit Corporation, acting by and through its officers, hereto duly authorize .

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of Parks, Recreation & Open Space Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Parks, Recreation & Open Space Improvements projects approved is a project titled "Botanical Gardens LF" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Botanical Gardens LF: Leveraged funding to possibly include a new Garden entry, educational facilities, and a Family Adventure Garden on expanded Garden footprint, from recent property acquisition"; and

WHEREAS, the City is bound to comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, the City has identified Grantee as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, City is the fee simple owner of the property located at 555 Funston Place, San Antonio, TX 78209 (Real Property), the proposed location of the Project; and

WHEREAS, Grantee has entered into a license agreement with City with a term through 2015 and a lease agreement with City with a term through 2035 for said property; and

WHEREAS, the public benefit to be gained from the project is the provision of parks, recreation and open space improvements, operated under non-profit regulations, available for the citizens of San Antonio and Bexar County; and

WHEREAS, the County has determined that the Project will provide the residents of the County with access to educational, recreational, and park activities which are consistent with and in furtherance of the County's existing park system; and

WHEREAS, by Ordinance No. 90969 dated December 9, 1999, the City Council of CITY created the Tax Increment Reinvestment Zone Number Nine (TIRZ) in accordance with the Act, to promote development and redevelopment within the TIRZ through tax increment financing, in which development and redevelopment would not otherwise occur solely through private investment in the reasonably foreseeable future; and

WHEREAS, by Ordinance 2014-09-18-0713 dated September 18, 2014, the City Council of CITY extended the term of TIRZ until September 30, 2034 and expanded the boundaries of the TIRZ on June 4, 2015 by Ordinance 2015-06-04-0489; and

WHEREAS, by Ordinance 2015-02-19-0106 dated February 19, 2015, the City Council of CITY approved the Funding Agreement in the amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00 ) attached as Exhibit “A” (“Agreement”); and

WHEREAS, COUNTY, pursuant to the Texas Local Government Code Sec. 332.021, will contribute Five Hundred Thousand Dollars (\$500,000.00) to the capital improvements of Twenty-One Million Eight Hundred Thousand Dollar (\$21,800,000.00), eight acre expansion of the Botanical Garden located on Real Property, and operated by GRANTEE (“County Contribution”).

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to tile mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**ARTICLE I**  
**PURPOSE**

This First Amendment between the PARTIES provides additional funding from COUNTY for the Botanical Gardens construction Project according to the terms and conditions detailed in the Agreement. The County Contribution will be used for the capital improvements of Twenty-One Million Eight Hundred Thousand Dollar (\$21,800,000.00), eight acre expansion of the Botanical Garden.

**ARTICLE II**  
**FUNDING FOR CONSTRUCTION PROJECT**

Through the execution of this FIRST AMENDMENT, COUNTY authorizes funding to the CITY in an amount not to exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00), which will be used to reimburse GRANTEE for construction of the Project as described in Article I.

**ARTICLE III**  
**FUNDING**

3.01 Article 5.01 is amended as follows:

**FUNDING AND ASSISTANCE BY CITY AND COUNTY**

- 5.1 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$1,176,000.00, plus the sum of \$24,000.00 that City shall retain for fiscal and project oversight, for total funding by City of \$1,200,000.00 and an additional funding by the COUNTY in an amount not to exceed the sum of Five Hundred Thousand Dollars (\$500,000.00). Thereby, the total sum of all payments to Grantee under the Agreement and this Amendment shall not exceed the sum of One Million Six-Hundred Seventy-Six Thousand Dollars and no cents (\$1,676,000.00).
- 5.2 City shall not be obligated nor liable under this Agreement to any party, other than Grantee and TCI, for payment of any monies or provision of any goods or services.
- 5.3 Total Funding under this Agreement and Amendment shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed \$1,676,000.00 and \$24,000.00 to be retained by the City,
- 5.4 It is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's or County's General Fund monies or any other monies or credits of City or County.

**ARTICLE IV**  
**MONITORING AND EVALUATION**

4.01 Article 10.01 is amended as follows:

- 10.01 Grantee agrees that City and County may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, as amended, and Grantee shall provide reasonable access to City and County related to such activities, and with all other laws, regulations and ordinances related to the performance thereof.

**ARTICLE V**  
**INDEMNITY AND INSURANCE**

5.01 Sections XI Indemnity and Section XII Insurance and Bonds shall indemnify County in the same manner as it has indemnified City in section XI and add "Bexar County"

as an additional insured under the insurance section in the same manner as the City has been added.

**ARTICLE VI**  
**NOTICES**

6.01 Add the following to the addresses listed in section XXIII:

If to the COUNTY      Bexar County Judge Bexar  
Paul Elizondo Tower  
101 W. Nueva St., Suite 1000  
San Antonio, Texas 78205

With a copy to      Office of the Bexar County Manager  
Paul Elizondo Tower  
101 W. Nueva St., Suite 1000  
San Antonio, Texas 78205

**ARTICLE VII**  
**OTHER TERMS AND CONDITIONS**

7.01 Except as modified by this Amendment, all other terms and conditions of the Agreement Parties shall remain unchanged and in full force and effect.

**ARTICLE VIII**  
**COMMISSIONERS COURT AUTHORIZATION**

8.01 This First Amendment was approved by Order of the Commissioners Court dated \_\_\_\_\_, 2017 authorizing the County Judge to execute this Agreement on behalf of COUNTY.

IN WITNESS WHEREOF, this Agreement is executed in duplicate originals effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**(Remainder of page intentionally blank)**

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**CITY OF SAN ANTONIO**

**BEXAR COUNTY**

\_\_\_\_\_  
Sheryl Sculley  
City Manager or Designee  
Date: \_\_\_\_\_

\_\_\_\_\_  
Nelson W. Wolff  
County Judge  
Date: \_\_\_\_\_

**ATTEST/SEAL:**

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\_\_\_\_\_  
Leticia M. Vacek  
City Clerk  
Date: \_\_\_\_\_

\_\_\_\_\_  
Gerard C. Rickhoff  
County Clerk  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

**Criminal District Attorney  
Bexar County, Texas**

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gerard A. Calderon  
Assistant Criminal District Attorney -  
Civil Section  
Date: \_\_\_\_\_

**APPROVED AS TO FINANCIAL  
CONTENT:**

\_\_\_\_\_  
Susan Yeatts, CPA  
County Auditor

\_\_\_\_\_  
David Smith  
County Manager

**APPROVED:  
SAN ANTONIO BOTANICAL SOCIETY, INC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT "A"**  
**FUNDING AGREEMENT**

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