

**PEDESTRIAN REFUGE ISLAND WITH MARKED CROSSWALK AT 6410  
SOUTH NEW BRAUNFELS AVENUE  
FUNDING AGREEMENT**

This Funding Agreement for a Pedestrian Safety Crosswalk at 6410 South New Braunfels Avenue (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 \_\_\_\_\_, 2019, LDG Copper Point, LP, a Texas, for-profit corporation (the "Donor"). The City, the Donor is each referred to herein as a "Party" and collectively as the "Parties."

**RECITALS**

**WHEREAS**, the City continues to look for ways to improve its streets and public right-of-way for the benefit of its citizens and visitors to San Antonio; and

**WHEREAS**, the San Antonio Housing Trust owns the real property located at 6410 South New Braunfels Ave, San Antonio, Texas 78223 and Donor is the developer and leaseholder of the property; and

**WHEREAS**, the City has completed a review of the existing traffic situation on South New Braunfels Avenue, has determined a pedestrian refuge island with marked crosswalk would benefit drivers and pedestrians on South New Braunfels Avenue and the ingress to and egress from Donor's development and City agrees to construct such pedestrian refuge island with marked crosswalk on South New Braunfels Avenue ("*Project*"); and

**WHEREAS**, the Parties have agreed to share in the cost of purchasing materials and installing the pedestrian refuge island with marked crosswalk on South New Braunfels Avenue near the Donor's project entrance; and

**WHEREAS**, the total cost of the materials and installation described above is estimated to be THREE HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED SIXTY-EIGHT DOLLARS AND 28/100 (\$358,568.28), as set forth in the City Cost Estimate, attached hereto, marked as "**Exhibit A**" and made a part hereof for all purposes ("*City Estimate*"); and

**WHEREAS**, Donor has agreed to contribute funds in the amount of ONE HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS AND 64 /100 (\$139,536.64) ("*Donor Funding*") for the completion of the Project, in accordance with the construction plans approved by City ("*Plans*"); and attached hereto as "**Exhibit B**" and made a part hereof for all purposes; and

**WHEREAS**, City has agreed to construct the Project and contribute funds in the estimated amount of TWO HUNDRED NINETEEN THOUSAND THIRTY-ONE DOLLARS AND

64/100 (\$219,031.64) from the 2017-2022 Bond, District 3 Pedestrian Mobility & Streets funds (“*City Funding*”);

**NOW THEREFORE**, inconsideration of the mutual covenants hereinafter set forth, it is agreed between the Parties as follows:

### **I. PURPOSE**

The Parties desire to enter into this Agreement, through which Donor will provide the Plans and contribute ONE HUNDRED THIRTY-NINE THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS AND 64 /100 (\$139,536.64) for the Project and City will construct the Project through one of the City’s on-call construction contracts and provide construction administration services for the Project in an estimated amount of TWO HUNDRED NINETEEN THOUSAND THIRTY-ONE DOLLARS AND 64/100 (\$219,031.64), subject to the provisions of this Agreement.

### **II. TERM**

Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon City Council approval and continue until the Project is completed, at which time this Agreement shall terminate.

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

The Donor shall contribute to the City the funding with a total value of \$139,536.64, to be used by City solely in connection with the Project. The Project shall consist of materials, construction, and installation of the pedestrian refuge island with marked crosswalk on South New Braunfels Avenue near the entrance to Donors project (Copper Pointe), in San Antonio, Texas. Donor agrees to produce and provide to City the Plans to be used in order to perform and complete the Project. Fifty percent (50%) of the Donor Funding shall be paid to the City once City initiates Project construction and the remaining fifty percent (50%) shall be paid by Donor to City upon final completion of the Project.

### **IV. OBLIGATIONS OF THE CITY**

4.1 Upon receipt of the Donor Funding, City will deposit such funds in the City’s Project account and limit use of Donor Funding to costs associated with the Project, and use the Plans to complete the construction of the Project. City shall be responsible for soliciting the construction, constructing the Project, providing construction administration services, and obtaining any permits necessary to complete the construction of the Project. The City shall be responsible for maintaining the Project after completion thereof.

4.2 Upon request by Donor or their representative, City will provide updates on the progress of the Project and the specific use of the Donor Funding, and subject to availability, attend site visits with Donor to Project location during construction.

#### **V. MEDIA**

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 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.

#### **VI. NOTICE**

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:**

Razi Hosseini, P.E, R.P.L.S..  
Interim Director/City Engineer, Transportation & Capital Improvements  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

Michael Gross  
Project Manager  
LDG Copper Point, LP  
1469 S. 4<sup>th</sup> Street  
Louisville, KY 40208

#### **VII. APPLICABLE LAW**

7.1 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.

7.2 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.

## **VIII. COMPLIANCE WITH LAWS**

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.

## **IX. AMENDMENTS**

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.

## **X. SEVERABILITY**

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.

## **XI. LEGAL AUTHORITY**

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.

## **XII. ENTIRE AGREEMENT**

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 is 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.

**XIII. COUNTERPARTS**

14.1 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 CITY OF SAN ANTONIO**

**LDG COPPER POINT, LP**

**By:** \_\_\_\_\_  
Razi Hosseini, P.E.,R.P.L.S.  
City Engineer/Director Transportation &  
Capital Improvements

\_\_\_\_\_  
Chris Dischinger, Member

**APPROVED AS TO FORM:**

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