

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

**FUNDING AGREEMENT FOR  
INFRASTRUCTURE IMPROVEMENTS AT  
STONE OAK AND ARROW HILL**

This **FUNDING AGREEMENT FOR INFRASTRUCTURE IMPROVEMENTS AT STONE OAK AND ARROW HILL** (hereafter referred to as the "Agreement") is hereby made and entered into by and between the City of San Antonio, a Texas municipal corporation (hereafter referred to as "City") and the Stone Oak Property Owners Association (hereinafter referred to as "Stone Oak POA"), acting by and through its duly authorized representatives. City and Stone Oak POA singularly shall be referred to herein as a "Party" and collectively shall be referred to herein "the Parties."

**Recitals**

WHEREAS, City is in the process of constructing infrastructure improvements, to include the installation of a new traffic signal at the intersection of Stone Oak and Arrow Hill; and

WHEREAS, Stone Oak POA has agreed to partner with City to complete infrastructure improvements and the installation of a traffic signal at the intersection of Stone Oak and Arrow Hill (hereafter referred to as "the Project"), in an effort to ensure the efficient flow of traffic through that intersection and in the surrounding area, as shown on the Project plans, attached hereto, incorporated herein by reference and labeled as **Exhibit A**; and

WHEREAS, to complete the infrastructure and improvements and traffic signal at said intersection, the estimated projected total Project cost is \$295,000; and

WHEREAS, Stone Oak POA has agreed to contribute a total funding amount to City not to exceed **THREE HUNDRED THOUSAND DOLLARS AND NO/100 (\$300,000.00)** toward the Project's cost to assist in the completion of the infrastructure improvements necessary, in accordance with City standards and within the established construction estimate; and

WHEREAS, the Parties desire to enter into this Agreement, through which City will fund the Project, inclusive of Stone Oak POA's **THREE HUNDRED THOUSAND DOLLARS AND NO/100 (\$300,000.00)**, oversee and administer the construction of the Project.

NOW THEREFORE, in consideration of these premises and for other goods and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree and, by the execution hereof, are bound to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**ARTICLE I**  
**PURPOSE**

The purpose of this Agreement is to establish the terms and conditions for City and Stone Oak POA to provide funding for the Project, to include completion of infrastructure improvements and the installation of a traffic signal at the intersection of Stone Oak and Arrow Hill, in an effort to ensure the efficient flow of traffic through that intersection and the surrounding area.

**ARTICLE II.**  
**TERM**

2.01 Except as otherwise provided herein, this Agreement shall commence upon the execution date of the last signatory Party to this Agreement and shall continue in full force and effect from the date of its commencement until all Project construction is complete and accepted by City, except as otherwise provided herein.

2.02 Upon completion of the Project, City has the duty to maintain the Project and to enforce warranties associated therewith. City's duties shall survive the termination of this Agreement.

**ARTICLE III.**  
**STONE OAK POA'S FINANCIAL COMMITMENT**

3.01 Stone Oak POA shall provide funds to City not to exceed **THREE HUNDRED THOUSAND DOLLARS AND NO/100 (\$300,000.00)** (hereafter referred to as "Stone Oak POA's Contribution) toward the total cost to be incurred by City in constructing the Project.

3.02 The Parties acknowledge the financial commitments made by Stone Oak POA and City, as stated in this Agreement, are independent of the necessary operating and maintenance expenses that are and shall remain City's responsibilities during and after the Project.

3.03 **THREE HUNDRED THOUSAND DOLLARS AND NO/100 (\$300,000.00)** is the total maximum Stone Oak POA funds committed to City for the Project. Stone Oak POA funding shall be used for construction of the traffic signal infrastructure, purchasing necessary materials, construction of pedestrian infrastructure, and the construction of the infrastructure necessary to provide electrical power to the intersection. No other funds shall be available from Stone Oak POA to City for the Project, unless Stone Oak POA requests in writing City increases its requested scope for the Project.

3.04 Stone Oak POA is responsible to provide Stone Oak POA's Contribution for this Project no later than fifteen (15) days after the San Antonio City Council approves the Funding Agreement for this Project.

3.05 Stone Oak POA shall neither be obligated nor liable under this Agreement to any party other than City for payment of any monies or provision of any goods or services, such obligation or liability being limited to the payment of the Stone Oak POA Funding, as set forth herein.

3.06 Additionally, City and Stone Oak POA agree this Agreement does not obligate City's General Fund monies or any other monies or credits of City unless budgeted and appropriated by City.

**ARTICLE IV.**  
**GENERAL RESPONSIBILITIES OF THE PARTIES**

4.01 Provided City receives the Stone Oak POA Contribution, City hereby accepts full responsibility for the performance of all services and activities, as described in this Agreement, to fully construct the Project on a timely basis as described herein.

4.02 The funds provided by Stone Oak POA under this Agreement only shall be used for work directly related to the Project.

4.03 Stone Oak POA hereby identifies and appoints Margaret Ann Malory-Lorente (hereafter referred to as "Stone Oak POA Project Manager") as its designated representative under this Agreement. Stone Oak POA Project Manager shall be the primary point of contact for City.

4.04 City hereby identifies and appoints the Department of Transportation & Capital Improvements Director/City Engineer, or his/her designee, (hereafter referred to as "City Project Manager") as its designated representative under this Agreement. City Project Manager shall be the primary point of contact for Stone Oak POA.

4.05 Communications between City and Stone Oak POA shall be directed to the designated representatives of each, as set forth in Article XIII of this Agreement.

4.06 City shall provide timely review and approval of design and construction contract documents for the Project.

4.07 Stone Oak POA agrees City shall have the authority to contract for all services necessary for the completion of the Project.

4.08 Stone Oak POA shall have no responsibility to maintain the Project.

**ARTICLE V.**  
**COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

5.01 City warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

5.02 If applicable, plan design must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin.

**ARTICLE VI.**  
**LEGAL AUTHORITY OF PARTIES**

6.01 Stone Oak POA represent, warrant, assure, and guaranty it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

6.02 The signers of this Agreement for Stone Oak POA represent, warrant, assure and guaranty that he/she has full legal authority to execute this Agreement on behalf of Stone Oak POA and to bind Stone Oak POA to all terms, performances and provisions herein contained.

6.03 City represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

**ARTICLE VII.**  
**PERFORMANCE BY CITY**

7.01 Subject to receipt of the Stone Oak POA Funding, City, in accordance and compliance with the terms, provisions and requirements of this Agreement, diligently shall oversee, manage, perform and provide all of the activities and services necessary to satisfactorily pursue to completion the Project. The projected date of completion of the Project is February 28, 2017, subject to the proceeding and subsequent provisions of this Agreement. Notwithstanding the foregoing, but at all times subject to Force Majeure (as defined below), City shall complete the Project on or before February 28, 2017. In the event the Project is not completed by such date, City agrees to release the Stone Oak POA Funding to Stone Oak POA upon thirty (30) days prior written request from Stone Oak POA, whereupon Stone Oak POA shall have no further duties or obligations (including, but not limited to, any duty to provide funding) to the Project and this Agreement thereupon shall terminate.

7.02 Performance of City's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure and City's obligations shall be abated during any period of force majeure. For purposes of this Agreement, force majeure shall include damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the Parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Project ROW or this Agreement (hereafter collectively referred to as "Force Majeure").

**ARTICLE VIII.**  
**RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY**  
**STONE OAK POA**

8.01 City agrees to maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement. City further agrees all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds and the Stone Oak POA Funding provided under this Agreement.

8.02 City agrees to maintain records providing accurate, current, separate and complete disclosure of the status of any funds received from Stone Oak POA, pursuant to this Agreement, to include:

- (A) the maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting principles; and
- (B) City's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

8.03 If City determines funds contributed by Stone Oak POA for the Project remain unspent following City's determination that the Project has been completed and paid for, such unspent funds shall be returned to Stone Oak POA.

**ARTICLE IX.**  
**ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

9.01 City shall cause a schedule of work and budget to be prepared for the Project. City shall submit said schedule of work and budget to Stone Oak POA within ninety (90) days after the effective date of this Agreement for review by City and Stone Oak POA.

9.02 Costs incurred by City associated with the Project's design and construction shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws, regulations and/or ordinances affecting City's operations hereunder.

9.03 Expenditures of the City funds and the Stone Oak POA Funding provided under this Agreement only shall be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

**ARTICLE X.**  
**SEVERALBILITY OF PROVISIONS**

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, 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.

**ARTICLE XI.**  
**NON-WAIVER OF PERFORMANCE**

11.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

11.02 No act or omission of a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

11.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the San Antonio City Council.

**ARTICLE XII.**  
**ENTIRE AGREEMENT**

This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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.

**ARTICLE XIII.**  
**NOTICES**

13.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

IF TO CITY:	Terry Bellamy Assistant Director Transportation and Capital Improvements Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
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IF TO STONE OAK POA:	Margaret Ann Mallory-Lorente Title: Property Manager Address: 19210 Huebner Rd, Suite 100 San Antonio, TX 78258
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13.02 Notice of change of address by any Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

**ARTICLE XIV.**  
**PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

**ARTICLE XV.**  
**RELATIONSHIP OF PARTIES**

Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

**ARTICLE XVI.**  
**TEXAS LAW TO APPLY AND VENUE**

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 San Antonio, Bexar County, Texas and exclusive venue shall lie in Bexar County, Texas.

**ARTICLE XVII.**  
**GENDER/NUMBERS**

Words of any gender used in this Agreement shall be held and construed to include any other gender. Words in the singular number shall be held to include the plural, unless the context otherwise requires.

**ARTICLE VIII.**  
**CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

*(Signature Page immediate follows this page)*



EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the 1~~st~~ day of april, 2016.

CITY OF SAN ANTONIO

STONE OAK PROPERTY OWNERS ASSOCIATION

By: \_\_\_\_\_  
SHERYL SCULLEY  
City Manager

By: Joe Silman  
JOE SILMAN  
President

Date: \_\_\_\_\_

Date: april 1, 2016

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A**

**PLANS FOR INFRASTRUCTURE IMPROVEMENTS  
AT STONE OAK AND ARROW HILL**