

AN ORDINANCE 2017-08-17-0575

AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE LICENSE AND LEASE AGREEMENT WITH THE SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC., FOR PURPOSES OF SECURING NEW MARKET TAX CREDITS FINANCING FOR PHASE II OF THE MASTER PLAN FOR THE SAN ANTONIO BOTANICAL GARDEN, LOCATED IN CITY COUNCIL DISTRICT 2, AND APPROVING RELATED DOCUMENTS.

* * * * *

WHEREAS, Chartered in 1980, the San Antonio Botanical Garden Society, Inc. (“SABGS”) is a non-profit organization specifically established in support of the San Antonio Botanical Garden (the “Garden”) located adjacent to Mahncke Park; and

WHEREAS, the City of San Antonio (the “City”) and SABGS have operated the Garden since 1981 and have detailed plans to transition the operation and management of the Garden to SABGS through a License and Lease Agreement; and

WHEREAS, through a public/private partnership with the City, the SABGS has completed major capital improvements at the Garden to include the Lucile Halsell Conservatory, the Sullivan Carriage House, the Auld House, revitalization of the Texas Native Trail, and acquired neighboring properties; and

WHEREAS, SABGS successfully completed fundraising for Phase I of the Master Plan which will open in the Fall of 2017 featuring new spaces such as a welcome building, discovery center with classrooms and an interpretive center, culinary garden, Family Adventure Garden, gift shop, display garden, gathering spaces and parking; and

WHEREAS, SABGS is requesting an Amendment to their License and Lease Agreement to facilitate New Market Tax Credits financing associated with completion of Phase II of their Master Plan; and

WHEREAS, the projected cost for Phase II is \$16.5M which underscores the Garden’s commitment to education, horticulture, community, culture, recreation, and conservation, to maximize the Garden’s impact to the community; and

WHEREAS, through this action, the License and Lease Agreement may not be terminated or modified without the consent of the New Market Tax Credits lender; and

WHEREAS, the City will not be obligated for any costs associated with these actions or the New Market Tax Credits Program financing; **NOW THEREFORE:**

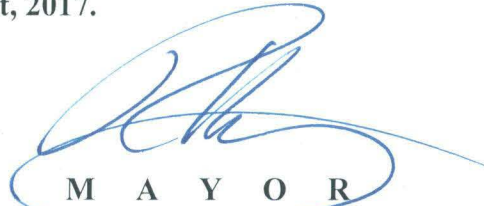
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is hereby authorized to execute an Amendment to the License and Lease Agreement with the San Antonio Botanical Garden Society, Inc., for purposes of securing New Market Tax Credits financing for Phase II of the Master Plan for the San Antonio Botanical Garden, located in City Council District 2. A copy of the amendment is attached hereto and incorporated herein for all purposes as **Attachment I**.


SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 17th day of August, 2017.

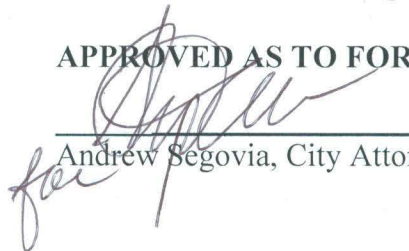

M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for Andrew Segovia, City Attorney

Agenda Item:	20 (in consent vote: 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16, 18, 19, 20, 22)						
Date:	08/17/2017						
Time:	09:50:39 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing execution of an Amendment to the License and Lease Agreement with the San Antonio Botanical Garden Society, Inc., for purposes of securing New Market Tax Credits financing for Phase II of the Master Plan for the San Antonio Botanical Garden, located in City Council District 2, and approving related documents. [María Villagómez, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x			x	
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

SW
08/17/2017
Item No. 20

Attachment I

AMENDMENT NO. 1 TO
SAN ANTONIO BOTANICAL GARDEN AGREEMENT

THIS AMENDMENT NO. 1 TO SAN ANTONIO BOTANICAL GARDEN AGREEMENT (this "Amendment"), is made and entered into as of _____, 2017 ("Effective Date") set forth below, by and between the CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation (the "City") and the SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC., a Texas non-profit corporation ("SABG"); with each party (each a "Party" and collectively, the "Parties") acting herein by and through its hereunto duly authorized representative.

RECITALS:

WHEREAS, the Parties hereto entered into that certain San Antonio Botanical Garden Agreement, pursuant to Ordinance No. 2010-10-21-092, dated October 21, 2010, a copy of which is attached hereto as Exhibit 1 (the "SABG Agreement"), which SABG Agreement incorporates (i) that certain License Agreement (the "License"), for that certain real property known as San Antonio Botanical Garden (the "Property"), more particularly described in Exhibit A attached to the License, and (ii) that certain Lease Agreement (the "Lease") for the Property;

WHEREAS, SABG desires to obtain a loan from Urban Development Fund LII, LLC, a Delaware limited liability company ("UDF"), in the estimated principal amount of \$7,500,000 (the "QLIC Loan"), which financing will be used to complete certain improvements on the Property, purchase certain furniture, fixtures, and equipment relating to the operation of the Property, and perform certain services for the benefit of the Property (the "Financing"); and

WHEREAS, in order for SABG to obtain the Financing, the Parties have agreed to amend the SABG Agreement on the terms and conditions set forth in this Amendment.

1. AGREEMENTS:

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree to amend the SABG Agreement as follows:

1.1 Acknowledgement of Term of License and Lease. City acknowledges that, pursuant to Section 4.1 of the SABG Agreement and based upon the exercise of all available renewal options, the term of the License will expire at the end of the day on December 31, 2018. Upon expiration of the License, the City acknowledges and agrees the Lease shall commence such that the term of the License and the term of the Lease are consecutive. The term of the Lease commences on January 1, 2019, with the initial term expiring at the end of the day on December 31, 2039, unless SABG exercises, in its sole discretion, its option to renew the Lease for an additional twenty (20) year term.

1.2 Notices; Default and Cure Rights. The Parties agree that upon the occurrence of any default by SABG under the SABG Agreement (including the License and/or the Lease), the City shall provide UDF with prompt notice of any asserted default against SABG under the SABG Agreement (which includes the License and the Lease). In the event of any act or omission of SABG which would give the City the right, immediately or after lapse of time, to cancel or terminate the SABG Agreement, the License, and/or the Lease, or to exercise any other remedy under the SABG Agreement (including the License and/or the Lease), the City shall not exercise such right or remedy until UDF has received notice and a reasonable period of time to cure said default (which cure period shall be the greater of the applicable cure period provided to SABG under the SABG Agreement or if no cure period is provided to SABG under the SABG

Agreement, then thirty (30) days) with such cure period commencing upon the later of (i) the expiration of SABG's applicable cure period, or (ii) UDF's receipt of notice of the default. Notwithstanding the foregoing, UDF shall have the right, but not the obligation, to cure a default under the SABG Agreement (including the License and/or the Lease). City agrees to accept the cure of any default by SABG from UDF, if timely made in accordance with the other terms and provisions of the SABG Agreement and this provision.

All notices and other communications to UDF shall be in writing and shall be deemed to have been duly given hereunder (i) five (5) Business Days after being enclosed in a properly sealed envelope, certified or registered mail, and deposited (postage and certification or registration prepaid), return receipt requested, in a post office or branch post office regularly maintained by the United States Postal Service, (ii) on the date of confirmation of receipt of transmission by telecopy, facsimile or comparable electronic system, (iii) on the date confirmation of delivery is received by the courier service, after placement with a commercial courier service for next business day delivery, or (iv) at the time delivered by hand, and addressed as follows:

Urban Development Fund LII, LLC ("UDF")
216 West Ohio Street,
5th Floor
Chicago, Illinois 60654

With copies of such notice provided simultaneously to the following:

U. S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Attn: Director of Asset Management-NMTC Deal # _____

Dentons US LLP
One Metropolitan Square
Suite 3000
St. Louis, Missouri 63102
Attention: Jennifer Simmons

Ginsberg Jacobs LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attention: Darryl Jacobs

1.3 Modification of SABG Agreement. Without UDF's prior written consent, the Parties shall not (a) amend or terminate the SABG Agreement (including the License and/or Lease), (b) assign any of SABG's rights under the SABG Agreement or sublet the Property or any part thereof, and/or (c) encumber the Property with any liens.

1.4 Legal Description. The Parties acknowledge and agree the Property is legally described on Exhibit 2 and such exhibit is incorporated herein by this reference.

1.5 Agreement Not to Encumber. The Parties hereto acknowledge and agree that upon UDF's request, (i) a memo of the SABG Agreement may be recorded in the public real estate records, and (ii) an agreement not to encumber the Property may also be recorded in the public

real estate records. The City further agrees that upon UDF's request, the City shall execute the foregoing documents.

1.6 Third Party Beneficiary. The Parties agree UDF shall be a third-party beneficiary of the terms of the SABG Agreement, including the terms of this Amendment, and UDF shall have the right to enforce the provisions thereof. During such time as the QLICI Loan is outstanding and UDF holds the QLICI Loan, the terms of the SABG Agreement shall neither terminate nor be modified without the prior written consent of UDF, which consent shall not be unreasonably withheld.

2. MISCELLANEOUS:

2.1 Further Assurances. The Parties shall execute and deliver any further instruments as may be necessary to effect the purposes of this Amendment.

2.2 Modification; Successors and Assigns. This Amendment may be modified only in writing, signed by the Parties, and permitted assigns, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

2.3 Counterparts. This Amendment may be executed in multiple identical counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single instrument.

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SIGNATURE PAGE
TO
AMENDMENT NO. 1 TO
LICENSE AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC.

By: _____
John Troy, President

DRAFT

SIGNATURE PAGE
TO
AMENDMENT NO. 1 TO
LICENSE AGREEMENT

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

CITY OF SAN ANTONIO

By: _____
Xavier D. Urrutia, Director,
Parks and Recreation Department

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1

COPY OF SABG AGREEMENT, INCLUDING LICENSE AND LEASE

DRAFT

**EXHIBIT A
TO
MEMORANDUM OF SAN ANTONIO BOTANICAL GARDEN AGREEMENT
[SEE FOLLOWING 2 PAGES]**

DRAFT

MEMORANDUM OF SAN ANTONIO BOTANICAL GARDEN AGREEMENT

THIS MEMORANDUM OF SAN ANTONIO BOTANICAL GARDEN AGREEMENT (this "Memorandum") is made and entered into as of the ____ day of _____, 2017 (the "Effective Date"), by and between the CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation (the "City") and the SAN ANTONIO BOTANICAL GARDEN SOCIETY, INC., a Texas non-profit corporation ("SABG"); with each party (each a "Party" and collectively, the "Parties") acting herein by and through its hereunto duly authorized representative.

City and SABG have entered into that certain San Antonio Botanical Garden Agreement (the "Original Agreement") pursuant to Ordinance No. 2010-10-21-092, dated October 21, 2010, which incorporates (i) that certain License Agreement (the "License"), for that certain real property known as San Antonio Botanical Garden (the "Property"), more particularly described in Exhibit A attached to the License, and (ii) that certain Lease Agreement (the "Lease") for the Property. The Original Agreement was amended and modified by a letter agreement (the "Letter") dated July 5, 2017 and further amended by a Amendment No. 1 To San Antonio Botanical Garden Agreement (the "First Amendment"). The Original Agreement, the Letter and the First Amendment are collectively referred to as the "Agreement".

The Agreement remains in effect for the following periods:

The term of the License is in effect and expires on December 31, 2018.

The term of the Lease commences on January 1, 2019 and expires on December 31, 2039 unless SABG exercises in its sole discretion, its option to renew the Lease for an additional twenty (20) year term.

In the event of any conflicts between the terms of this Memorandum and the terms of the Agreement, the terms of the Agreement shall control. This Memorandum is not intended to expand the rights of the parties under the Agreement. The other provisions set forth in the Agreement are hereby incorporated by reference into this Memorandum.

This Agreement is executed as of the Effective Date as set forth above.

[The balance of this page intentionally left blank. Signatures appear on the following pages]

**SIGNATURE PAGE
TO
MEMORANDUM OF SAN ANTONIO BOTANICAL GARDEN AGREEMENT**

SABG:

SAN ANTONIO BOTANICAL GARDEN SOCIETY,
INC., a Texas nonprofit corporation

By: _____
Type or
Print Name: _____
Title: _____

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me, the undersigned authority by _____
_____, the _____ of SAN
ANTONIO BOTANICAL GARDEN SOCIETY, INC., a Texas nonprofit corporation, in the
capacity therein stated and on behalf of said corporation.

Notary Public, State of Texas
My commission expires: _____

**SIGNATURE PAGE
TO
MEMORANDUM OF SAN ANTONIO BOTANICAL GARDEN AGREEMENT**

CITY:

CITY OF SAN ANTONIO, a Texas municipal corporation

By: _____
Type or
Print Name: _____
Title: _____

STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me, the undersigned authority by _____, the _____ of CITY OF SAN ANTONIO, a Texas municipal corporation, in the capacity therein stated and on behalf of said corporation.

Notary Public, State of Texas
My commission expires: _____

Upon Recording, Return to:
Robert P. Jordan
Commercial Escrow Officer
Chicago Title Company
270 N. Loop 1604 East, Suite 120
San Antonio, Texas 78232

EXHIBIT 2
LEGAL DESCRIPTION

DRAFT

FIELD NOTES
FOR
37.788 ACRE TRACT

A 37.788 acre tract of land, situated in the City of San Antonio, Bexar County, Texas and being a portion of Lot 1, Block 3, N.C.B. A-50, of the Mahncke Park Subdivision of record in Volume 9510 Page 46-48 of the Deed and Plat Records of Bexar County, Texas, all of that 1.790 acre tract of land, known as Funston Place, a 50 foot right of way, closed by Ordinance of record in Volume 13910 Page 1096 of the Official Public Records of Bexar County, Texas and all of Lots 1 through 28, N.C.B. 7186, of the Hilltop Terraces Subdivision of record in Volume 1625 Page 163 of the Deed and Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING: At a set 1/2" iron rod with a blue plastic cap stamped "KFW SURVEYING" for the northeast corner of the intersection of Funston Place and New Braunsfels Avenue, being the southwest corner of Lot 1, Block 3, of the Mahncke Park Subdivision, for the most westerly northwest corner of the tract described herein.

THENCE: N 89°49'56" E with the south line of Lot 1, Block 3 and the north line of the 1.790 acre tract, a distance of 194.20 feet to a set PK nail with washer stamped "KFW SURVEYING" for an interior corner of the tract described herein.

THENCE: N 00°15'55" W into and across Lot 1, Block 3, a distance of 239.45 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW SURVEYING" in the south right of way line of Parland Place of the Northview Mahncke Park Subdivision of record in Volume 642 Page 89 of the Deed and Plat Records of Bexar County, Texas and a north line of Lot 1, Block 3 for a corner of the tract described herein.

THENCE: with the south, east and southeast line of the Northview Mahncke Park Subdivision and the south line of Parland Place right of way line and the east line of Millie Lane and the north, west and northwest line of Lot 1, Block 3 the following calls and distances:

1. N 89°54'14" E, a distance of 260.66 feet to a found 1/2" iron rod with "MLS" Cap at the southeast intersection of Parland Place with Millie Lane, for an interior corner of Lot 1, Block 3 and the tract described herein,
2. N 00°02'23" E, a distance of 511.49 feet to a set 1/2" iron rod with a blue plastic cap stamped "KFW SURVEYING" in the southeast line of Lot 19, Block 4, C.B. 6527 for a westerly corner of Lot 1, Block 3 and the tract described herein,
3. N 44°45'48" E, a distance of 482.39 feet to a found concrete monument in the south line of Lot 1, Block 2, C.B. 6525, for the most northerly northwest corner of Lot 1, Block 3 and the tract described herein, and
4. N 89°48'51" E, a distance of 999.96 feet to a found iron pipe in the northwest line of Old Austin Road, for the southeast corner of Lot 40, Block 2, C.B. 6525, the northeast corner of Lot 1, Block 3 and the tract described herein.

THENCE: S 11°58'09" W with the northwest right of way line of Old Austin Road and the southeast line of Lot 1, Block 3, a distance of 1117.42 feet to a found 1/2" iron rod at the northwest intersection of Funston Place with Old Austin Road for the northeast corner of the 1.790 acre tract and the southeast corner of Lot 1, Block 3 and an angle point of the tract described herein.

THENCE: S 06°17'23" W across Funston Place, with the east line of the 1.790 acre tract, a distance of 50.32 feet to a found 1/2" iron rod with "MLSCO" Cap at the southwest intersection of Funston Place with Old Austin Road, for the southeast corner of the 1.790 acre tract, the northeast corner of Lot 28, N.C.B. 7186, Hilltop Terraces Subdivision, for an angle point of the tract described herein.

THENCE: S 11°47'36" W with the southeast line of Lot 28 and the northwest right of way line of Old Austin Road, a distance of 150.62 feet to a found iron pipe at the northwest intersection of Pinckney Street with Old Austin Road and the southeast corner of Lot 28 and the tract described herein.

THENCE: S 89°49'56" W with the south line of Lots 28 thru 1, N.C.B. 7186, of the Hilltop Terraces Subdivision and the north right of way line of Pinckney Street, a distance of 1525.21 feet to a set PK Nail with washer stamped "KFW Surveying" in top of a concrete wall in the east right of way line of New Braunsfels Avenue, for the southwest corner of Lot 1 and the tract described herein.

THENCE: with the east right of way line of New Braunsfels Avenue, the west line of Lot 1 and the 1.790 acre tract the following calls and distances:

1. N 00°10'04" W, a distance of 147.35 feet to a found 1/2" iron rod at the southwest intersection of Funston Place with New Braunsfels Avenue, for the southwest corner of the 1.790 acre tract and the northwest corner of Lot 1, and
2. N 00°05'38" W, a distance of 50.00 feet to the **POINT OF BEGINNING** and containing 37.788 acres (1,646,058 Square Feet more or less) and being described in accordance with a survey prepared by KFW Surveying.

Job No.: 08-094
Prepared by: KFW Surveying
Date: October 28, 2009
File: S:\Draw 2008\08-094 SA Botanical Gardens\37.788 ACRES.doc

