

PHIL HARDBERGER PARK LAND BRIDGE FUNDING AGREEMENT

This Phil Hardberger Park Land Bridge Funding 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 XXX, 2018, the Hardberger Park Conservancy, a Texas public, non-profit corporation (the “Conservancy”). The City, the Conservancy is each referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Phil Hardberger Park is a 311 acre City park that first opened in May 2010, and is divided by Wurzbach Parkway with the West Park located at 8400 N.W. Military and the East Park located at 13203 Blanco Road in Council Districts 8 and 9; and

WHEREAS, on May 6, 2017, San Antonio voters approved the 2017-2022 Bond Program, consisting of six propositions totaling \$850 Million, which included \$7,500,000 under Proposition 1 Streets, Bridges & Sidewalk Improvements and \$5,500,000 under Proposition 3 Parks, Recreation & Open Space Improvements associated with Phil Hardberger Park improvements in accordance with the City Council approved Phil Hardberger Park Master Plan (the “Master Plan”); and

WHEREAS, in accordance with the City Council approved Master Plan, the Phil Hardberger Park Land Bridge will be constructed over Wurzbach Parkway connecting the West and East Parks in order to provide pedestrian, bicycle and wildlife mobility throughout the Park (the “Project”), and;

WHEREAS, the Phil Hardberger Park Conservancy (the “Donor”) is a 501(c)3 nonprofit organization that supports all aspects of the park, from planning activities to fundraising; and

WHEREAS, this Agreement will document the \$10,000,000 in value (the “Funding”) attributable to Conservancy and state the terms by which the cash portion of that Funding will be transferred to the City to supplement the funds approved in the 2017-2022 Bond Program for improvements towards completion of the Project; 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 Conservancy will provide funding totaling \$10,000,000 to the City for planned improvements to the Project, the Phil Hardberger Park Land Bridge constructed over Wurzbach Parkway connecting the West and East Parks in order to provide pedestrian, bicycle and wildlife mobility throughout the Park.

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II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon City Council approval on September 6, 2018 and continue until the Project is completed, at which time this Agreement shall terminate.

III. OBLIGATIONS OF THE DONOR

3.1 The Conservancy shall contribute to the City the funding with a total value of \$10,000,000, solely for the use by the City in connection with the Hardberger Land Bridge project. The contribution includes design and construction fundraising from private donors, public donors, and the design construction documents. The funding amounts may be adjusted as long as the total amount remains at a minimum of \$10,000,000. The contribution delivery shall include the cash portion of the donation along with an assignment of any necessary contractual rights associated with the design of the Project. Public donations include \$1,000,000 from Bexar County towards the construction of the project to be provided in three annual installments, subject to appropriation, of which the first of three payments was approved by the Bexar County Commissioner's Court on March 19, 2018, and \$2,000,000 as part of a Texas Parks and Wildlife (TPWD) Grant pursuant to Ordinance No. 201604140280 approved on April 14, 2016. Private donations total \$4,205,000, of which \$2,520,000 will be provided in lump sum upon the Agreement execution, followed by three annual installments of \$561,666.66 beginning in June 2019. All private donations fundraised by the Conservancy specific to the land bridge will be applied towards the construction of the project.

Conservancy Fundraising Contribution

Public Donations (Bexar County & TPWD Grant)	3,000,000
Private Donations	4,205,000
Conservancy Funded Design & Construction Services	2,795,000
Total	\$10,000,000

3.2 Conservancy will jointly plan and participate in a ground-breaking ceremony and/or such other presentations announcing the Donation and project, the date and specifics of which will be determined by the City in consultation with the Donor.

V. OBLIGATIONS OF THE CITY

5.1 Upon receipt of the Funding, the City will deposit the funds in the City's account established for the Project and limit use of the funds to costs associated with the Project, and use the design construction documents to complete the construction of the project.

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5.2 Upon request by the Conservancy or their representative, the City will provide updates on the progress of the Project and the specific use of the Funding, and subject to availability, attend site visits to the location of the Project in Hardberger Park.

5.3 The City will recognize the Conservancy and the Funding according to mutually agree upon terms such as by the placement of an appropriate plaque or small monument to document the funding.

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 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/City Engineer, Transportation & Capital Improvements
P.O. Box 839966
San Antonio, Texas 78283-3966

If to the Donor:

Phil Hardberger Park Conservancy
1021 Voelcker Lane #4
San Antonio, Texas 78248

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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.

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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 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.

IX. 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

**PHIL HARDBERGER PARK
CONSERVANCY**

By: _____

Mike Frisbie, P.E., City Engineer/Director
Transportation & Capital Improvements

Phil Hardberger, President

APPROVED AS TO FORM:

Andy Segovia, City Attorney