

## **FIRST AMENDMENT TO THE FUNDING AGREEMENT FOR THE SAN ANTONIO BOTANICAL GARDEN**

FOR VALUE RECEIVED, the receipt and sufficiency of which is acknowledged, this First Amendment to the Funding Agreement for the San Antonio Botanical Garden (“First Amendment”) is entered into by and between the City of San Antonio, a Texas Municipal Corporation in Bexar County, Texas (“City”), the Board of Directors (“Board”) for Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, and San Antonio Botanical Garden Society, Inc. (“Developer”), a nonprofit corporation registered in the State of Texas, whom together may be referred to as the “Parties”.

### **RECITALS**

**WHEREAS**, City, Board and Developer entered into a Funding Agreement (the “Agreement”) authorized by City of San Antonio Ordinance No. 2022-02-10-0093, passed and approved on February 10, 2022, and attached hereto as EXHIBIT A; and

**WHEREAS**, the Parties now seek to amend the terms and conditions of the Agreement in order to expand the scope of the Project;

**NOW THEREFORE**, the Parties hereby agree and amend as follows:

1. The Parties mutually agree to amend the following sections of the Agreement:

(A) The Introductory Paragraph on Page 1 of the agreement is deleted in its entirety and replaced with the following:

This Funding Agreement (“Agreement”), pursuant to City Ordinance No. 2022-02-10-0093 and subsequently amended by City Ordinance No. \_\_\_\_\_ is entered into by and between the City of San Antonio, a Texas Municipal Corporation in Bexar County, Texas (“City”), the Board of Directors (“Board”) for Tax Increment Reinvestment Zone Number Thirty-One, City of San Antonio, Texas, and San Antonio Botanical Garden Society, Inc. (“Developer”), a nonprofit corporation registered in the State of Texas, whom together may be referred to as the “Parties”.

(B) The **BACKGROUND** section on Page 1 of the agreement is amended by adding a ninth and tenth paragraph as follows:

**WHEREAS**, following the initial construction of the Project, a determination was made that it was imperative to add waterproofing to the Lucile Halsell Conservatory for the Desert Room and Fern Grotto, as well as providing for additional glass to ensure the integrity of the waterproofing seals, such that additional improvements are required in the amount of ONE MILLION THREE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED EIGHTY-THREE DOLLARS AND NO CENTS (\$1,354,983.00); and

**WHEREAS**, on April 15, 2024, the Board approved Resolution T31 2024-04-15-03R authorizing the additional funding for the Project;

(C) **ARTICLE II. DEFINITIONS** is amended by deleting all of subsection 2.5 and substituting the following in its place:

**CITY’S REVENUE FUND** – A fund established by City for the deposit of Six Million Three Hundred Fifty-Four Thousand Nine Hundred Eighty-Three Dollars and No Cents (\$6,354,983.00) from the issuance of the Certificates of Obligation.

(D) **ARTICLE IV. THE PROJECT** is amended by deleting all of subsection 4.1 and substituting the following in its place:

**PROJECT.** The Project shall consist of the construction of Public Improvements and Public Infrastructure, including renovation of the conservatory, greenhouses, lighting, waterproofing, glasswork and development of a master plan for the San Antonio Botanical Garden, located at 555 Funston Place, San Antonio, Texas, in City Council District 2.

(E) **ARTICLE V. DUTIES AND OBLIGATIONS OF DEVELOPER** is amended by deleting all of subsection 5.2 and substituting the following in its place:

**PROJECT ESTIMATION.** The current budget estimates of the Project are approximately \$9,654,983.00 (“Project Estimation”). Developer shall provide all necessary funding for the Project Estimation beyond the Board's commitment of \$6,354,983.00. Developer shall provide evidence to the Board that all Project Estimation funds have been secured prior to the receipt of any funding under this Agreement. In the event that the scope of the Project is adjusted downward, the Board shall have the option of adjusting its commitment downward accordingly. The Board is not responsible for any costs exceeding the Project Estimation unless agreed to in writing in the form of an amendment to this Agreement. All funding for the Project must be secured by June 1, 2025, otherwise this Agreement can be terminated and the funds released to the Board for reallocation in the TIRZ.

(F) **ARTICLE VI. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS** is amended by deleting all of subsections 6.2, 6.4 and 6.6.

(G) **ARTICLE VII. OBLIGATIONS OF THE BOARD** is amended by deleting all of subsection 7.2 and substituting the following in its place:

**PLEDGE OF FUNDS.** The Board hereby pledges TIF Funds, as payment to City for debt service on Six Million Three Hundred Fifty-Four Thousand Nine Hundred Eighty-Three Dollars and No Cents (\$6,354,983.00) in Certificates of Obligation issued for eligible project costs, subject to the terms and conditions in this Agreement, priority of payment schedule, and termination of the TIRZ.

(H) **ARTICLE X. REIMBURSEMENT** is amended by deleting all of subsections 10.3 and 10.4 and substituting the following in its place:

10.3 **AVAILABLE FUNDS.** The sole source of the funds to reimburse Developer for Project Costs shall be Six Million Three Hundred Fifty-Four Thousand Nine Hundred Eighty-Three Dollars and No Cents (\$6,354,983.00) held in the City's Revenue Fund and funded through the issuance of Certificates of Obligation.

10.4 **MAXIMUM REIMBURSEMENT.** Following PRIMElink approval, Developer shall receive in accordance with this Agreement, from the City's Revenue Fund a total maximum reimbursement of SIX MILLION THREE HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED EIGHTY-THREE DOLLARS AND NO CENTS (\$6,354,983.00) for eligible Project Costs.

2. All other terms, conditions, covenants and provisions of the Agreement are hereby continued and shall remain in effect in their original form, except for the provisions expressly modified by this First Amendment.

This First Amendment has been fully executed as of the date of signature of the last party to sign.

**SIGNATURE PAGE TO FOLLOW**

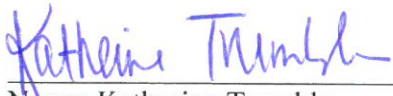
**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**BOARD OF DIRECTORS**  
Midtown TIRZ #31

\_\_\_\_\_  
Erik Walsh  
CITY MANAGER  
Date: \_\_\_\_\_

\_\_\_\_\_  
Lori Houston  
PRESIDING OFFICER  
Date: \_\_\_\_\_

**SAN ANTONIO BOTANICAL  
GARDEN SOCIETY, INC.**

  
\_\_\_\_\_  
Name: Katherine Trumble  
Its: Interim Chief Executive Officer  
Date: 4/23/24

**APPROVED AS TO FORM:**

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