

DONATION AGREEMENT

This donation agreement (“Agreement”) is entered into by and between THE CITY OF SAN ANTONIO, TEXAS, a Texas Home Rule Municipality (hereafter “City” or “Donee”) and the MITCHELL CHANG FOUNDATION, a Texas Non-Profit Corporation having EIN Number 82-5209603 and operating as an IRC 501(c)(3) corporation (hereafter “Foundation” or “Donor”); and is effective as of August 16, 2022 (hereafter the “Effective Date”) pursuant to the following terms and conditions:

DEFINITIONS:

For purposes of this Agreement, the term:

“**Agents**” or “**Vendors**” shall mean the Foundation and its vendors, consultants, contractors and subcontractors responsible for installing the Park Improvements (defined below), also known as Playcore, Gametime, Barcon, and GT Impax.

“**Agreement**” shall mean this donation agreement entered into by and between The City of San Antonio and the Mitchell Chang Foundation for the donation and installation of Park Improvements.

“**ASTM Standards**” shall mean the American Society for Testing and Materials standards designed to improve product quality and make products safer.

“**City**” or “**Donee**” shall mean the City of San Antonio, a Texas Home Rule Municipality.

“**Effective Date**” shall mean the 16 of August, 2022.

“**Foundation**” or “**Donor**” shall mean the Mitchell Chang Foundation, a 501(c)(3) non-profit foundation.

“**License**” shall mean the grant of a right of entry and right of use by the City to the Foundation, pursuant to Section 253.011 of the Texas Local Government Code, that authorizes and requires the Foundation (and its Agents and Vendors) to utilize the Playground in a manner that primarily promotes the public park purposes of the City by conducting the Playground Installation, and thereafter providing the Foundation with the associated and continuing right to access, inspect, and periodically use the Playground and surrounding areas within the Park during the Term of this Agreement and of the License.

“**Mitchell’s Landing**” or “**Playground**” shall mean the 22,648 sqft site within the City’s “Classen-Steubing Ranch Park” located at 20202 Hardy Oak Parkway, San Antonio, TX 78258 upon which the Playground Improvements will be made, and which is more specifically identified on **Exhibit “A”** which is attached hereto and made a part hereof for all purposes.

“**Park**” shall mean the City’s Classen-Steubing Ranch Park located at 20240 Hardy Oak Blvd, San Antonio, TX 78258.



“Playground Improvements” or **“Equipment”** shall mean the playground equipment, apparatus or structure designed for play and recreational use including but not limited to; swings, slides, jungle gyms, climbing features, natural playground, shade covers, and Safety Ground Cover (as defined below), and other improvements identified in **Exhibit “B”** which is attached hereto and made a part hereof, which will be donated and installed by the Foundation and or its Agents and Vendors within the Playground pursuant to this Agreement.

“Playground Installation” or **“Installation”** shall mean the process by which the Playground Equipment is installed in Mitchell’s Landing by the Foundation, its Agents and Vendors, and the City pursuant to this Agreement.

“Safety Ground Cover” shall mean engineered wood fiber, mulch, and the poured rubber, also commonly called pour-in-place (PIP) rubber or poured playground surface that will be installed by the Foundation and maintained by the City as a part of the Playground Improvements.

RECITALS AND REPRESENTATIONS:

WHEREAS, Donor wishes to donate the Playground Equipment and Safety Ground Cover to be Playground Improvements set aside for the use and benefit of the general public of the City within the Park operated and maintained for such purposes by the City’s Park and Recreation Department during the term of this Agreement and the License contained herein; and

WHEREAS, Donor also wishes to donate the funds necessary to complete the Playground Installation of the Park Improvements; and

WHEREAS, Donor desires to donate the Park Improvements to Donee for the purpose of providing an inclusive and public benefit playground to the City of San Antonio’s community while honoring the late Mitchell Chang; and

WHEREAS Donee desires to accept such donations of the Playground Equipment and Playground Installation from Donor, as goods and services provided by the Foundation to the City, in order to enrich the lives of its citizenry, create inclusive environments for recreation, and bring a sense of community to the areas surrounding the Park; and

WHEREAS, the City represents that the City has approved this Agreement by an Ordinance passed by a majority vote of its City Council, and said Ordinance authorized the undersigned official, acting in their official capacity as an officer of the City, to execute this Agreement and bind the City to the rights and obligations contained within this Agreement; and

WHEREAS, Donor represents to City that it has the financial means to carry out the obligations set out herein;

NOW, THEREFORE, for good and valuable consideration, the Parties hereby agree as follows:

A handwritten signature in blue ink, appearing to be the initials 'AD' with a large loop at the end.

1. **Incorporation.** The Definitions and Recitals and Representations listed above are fully incorporated herein for all purposes.
2. **Donation.** Donor shall donate, to Donee, subject to the term of this Agreement, the Playground Improvements, the Safety Ground Cover, and the Installation thereof in the Park designated as Mitchell's Landing.
3. **Purposes.** The City shall use the Playground Improvements and the Safety Ground Cover exclusively for the following purposes:
 - a. To honor the late Mitchell Chang and the Mitchell Chang Foundation through the naming of the area in which such aforementioned improvements are being donated, and
 - b. To serve the public purpose of providing inclusive playground to facilitate recreation for the San Antonio community.
4. **License.** The City hereby grants unto Donor, an Right of Entry to the Foundation and its Agents and Vendors, to facilitate access to, from, and within Mitchell's Landing, set within the Park. Additionally, the City hereby grants a license to the Foundation for the Foundation and its Agents and Vendors to conduct the Installation, testing, general construction, photography, videography, and other actions as deemed necessary by Donor within Mitchell's Landing for the purposes of this Agreement.
5. **Digital Content.** The Foundation may, at its discretion, post digital content of Installation, construction, testing, and the status thereof on its website or its social media pages. The Foundation shall maintain exclusive ownership of any videos or photos used on its website or social media pages and may use said videos or photos for any purpose.
6. **Permits.** The City agrees to conduct expedited review, processing, and issuance of any and all permits to the Foundation and its Agents or Vendors that the City requires for the purposes of the Playground Installation.
7. **HOLD HARMLESS AND INDEMNIFICATION.** THIS SECTION SHALL APPLY AFTER THE CITY ACCEPTS THE DONATED IMPROVEMENTS. TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES TO PROTECT, DEFEND (WITH ATTORNEYS REASONABLY ACCEPTABLE TO THE FOUNDATION), HOLD HARMLESS, AND INDEMNIFY THE FOUNDATION, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, AND AGENTS (HEREIN COLLECTIVELY REFERRED TO AS "INDEMNITEES"), FROM AND AGAINST ALL CLAIMS, ACTIONS, LIABILITIES, DAMAGES, LOSSES (INCLUDING ECONOMIC LOSSES), FEES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES INCURRED IN THE ENFORCEMENT OF THIS INDEMNITY PROVISION) ARISING IN WHOLE OR IN PART OUT OF: (A) ANY ACTUAL OR ALLEGED BODILY INJURY OR DEATH; (B) INJURY TO, DESTRUCTION OF, OR ENVIRONMENTAL IMPAIRMENT OF TANGIBLE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE LOSS OF USE RESULTING THEREFROM; (C) VIOLATION OF APPLICABLE LAWS, RULES OR REGULATORY

REQUIREMENTS; (D) FAILURE BY DONEE TO PROCURE AND MAINTAIN ALL INSURANCE REQUIRED BY THIS AGREEMENT; OR (E) ANY OTHER DAMAGE OR LOSS RELATED TO, ARISING OUT OF, OR RESULTING FROM THE USE OF MITCHELL'S LANDING OR THE PLAYGROUND EQUIPMENT (INCLUDING, WITHOUT LIMITATION, ITS MAINTENANCE, OPERATION, AND INSPECTIONS) OR NEGLIGENT ACT OR OMISSION (WHETHER SOLE, JOINT, CONCURRENT OR GROSS) OF CITY, OR ANY OFFICER, DIRECTOR, AGENT, EMPLOYEE OR REPRESENTATIVE OF CITY, RELATED IN ANY WAY TO THE PROPERTY. THIS INDEMNITY SHALL SURVIVE THE TERM OF THIS AGREEMENT.

8. **Insurance.** During the Term of this Agreement the Foundation (or its Vendors and Agents) shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 for each occurrence and a \$2,000,000 aggregate limit, to insure against claims arising out of the Installation. Such policy shall be written on a form or forms acceptable to the City and shall cover liability arising from premises liability, operations, personal injury, and liability arising out of the Installation conducted by the Foundation and its Vendors and Agents during and related to the Installation within the Park. The City shall be included as an additional insured on such policy and the Foundation shall provide the City with a certificate indicating same prior to conducting the Installation of the Playground Equipment and Safety Ground Cover within the Playground.
9. **Playground Name.** Within 30 days from the completion of the Installation the City shall, by Ordinance or Resolution, officially name the Playground, and the Park Improvements therein "Mitchell's Landing" or "Mitchell's Landing at Classen-Steubing Ranch Park" (the "Name"); and shall keep and maintain the Name of the Playground Improvements and the Playground site as "Mitchell's Landing" or "Mitchell's Landing at Classen-Steubing Ranch Park" on all relevant and applicable signs, location designators, advertisements, promotional information, or any other similar document, flyer, or brochure, whether physically or digitally produced or maintained by the City and such Name shall continue so long as the Park Improvements are located at the Park. Should the City wish to change the name of the Playground and Park Improvements to something different than the Name designated herein, the City must receive written approval from the Executive Director of the Foundation prior to proceeding with changing the name.
10. **Mitchell Chang's Story.** The Parties agree that the story of Mitchell Chang's life and untimely death is important to convey to the public as it serves not only to honor the life and impact Mitchell Chang has in the world, but it also serves as a impactful reminder of the importance of child safety and need for caregivers to properly supervise and protect the lives and wellbeing of children entrusted to their care. As such, the parties agree that the story of Mitchell Chang shall be posted and displayed on the Playground Equipment or Park Premises and digitally on the City's Parks and Recreation Department website, as approved in writing by the Foundation.
11. **Signage.** The size, location, layout and message content of all signage related to Mitchell's Landing shall be mutually agreed to by the Parties. Any description of Mitchell's Landing by the City, whether physical or digital, shall reference Mitchell's Landing as follows: "In honor of Mitchell Chang and his way of including all people around him to play and have

fun, Mitchell's Landing is a playground for all community members." Additionally, a QR Code, or similar technology, linked to the Foundation's website shall be affixed on the Equipment to provide Mitchell Chang's story. QR Codes and other technology used for the linking of information will be provided by and maintained by the Foundation. Other signage to be affixed to the Equipment includes sponsor information and equipment usage instructions. All sponsorship signage must be approved by the Foundation prior to installation or affixation to the Equipment.

12. **Sponsors.** The Parties agree that the Foundation shall have the exclusive right to choose, contract with, and post advertisements for any and all sponsors of the Playground Improvements within and around Mitchell's Landing, provided however, all such advertisements shall be in alignment with the purposes and mission of the Parks and Recreation Department of the City of San Antonio. The City shall prohibit any other organization or entity, whether for or not for profit, to post, affix, or otherwise affiliate with Mitchell's Landing or the Equipment as a sponsor, unless otherwise agreed to in writing by the Foundation.
13. **Coming Soon Sign.** Prior to the official opening of Mitchell's Landing and subsequent to the Equipment being ordered, the Foundation shall fund, furnish, and install within the Playground and Park a sign notifying the public of the anticipated Playground which shall be posted on the boundary and future entrance of Mitchell's Landing within the Park. Said coming soon sign shall remain posted until such time that Mitchell's Landing is officially opened to the public.
14. **Mosaic Wall.** The Foundation and its Agents may design, construct, and install a tile mosaic and handprint recognition wall within Mitchell's Landing, the location of which may be approved by the City's Parks Department.
15. **Ownership Transfer.** Once the Equipment Installation is complete, as determined by the Foundation, the Foundation shall notify the City of said completion in writing, and the City shall accept and become the owner of all Playground Improvements and Equipment, subject to the provisions of this Agreement and the continuing right(s) of the Foundation herein.
16. **Liability.** Upon the occurrence of the Ownership Transfer in the preceding section taking place, the City shall have the sole responsibility and liability for the Equipment, Playground Improvements, Safety Ground Cover, signage strictly related to safety and Equipment usage instructions, and other related amenities that were donated by and installed by the Foundation ("Donated Improvements").
17. **Excellent Playground Condition.** The City shall keep and properly maintain the grounds within Mitchell's Landing and the Donated Improvements in a safe, operational, and clean condition, which shall among other things, mean maintaining a clean building and Equipment exterior, maintaining the landscaping in and around Mitchell's Landing such as ensuring the grounds are free of overgrown, noxious or offensive weeds and are maintained in a neat fashion to ensure that their users of the playground are not subjected to an adverse or unpleasant condition of the playground. If, in its sole discretion, the Foundation



determines the City has failed to meet its obligations under this section, the Foundation shall notify the City of its determination in writing. If the City has not corrected the failure within 30 days after the date of such notice, the Foundation may, but shall not be required to, take all steps it deems necessary or advisable to provide such maintenance or undertake the work of making such improvement.

18. **Monthly Inspections.** The City shall cause the Equipment and Safety Ground cover to be inspected monthly, at a minimum, by a certified playground inspector, holding a current certification that carries an error and omissions insurance policy as well as a general liability insurance policy. Said inspector shall follow ASTM standards and a copy of the monthly inspection report shall be provided to the Foundation.
19. **Monthly Maintenance.** The City shall cause the Playground Equipment to be maintained monthly, at a minimum, to the standards contained in the manufacturer's recommended maintenance, operation, and instruction guidance document, a copy of which is attached hereto as **Exhibit "C"**, to maintain the safety of the Equipment and maintain the continuation of the Equipment's warranty.
20. **Pre-Opening Inspection.** Prior to Mitchell's Landing opening to the public, the Foundation will cover the expense for third-party inspector to inspect the Safety Ground Cover and produce a report based on said inspection. The Foundation shall provide a copy of such inspection to the City as soon as reasonably practicable.
21. **Third-Party Inspections.** The Foundation may, at its sole discretion and cost, hire a third-party inspector to perform an inspection of the Playground Equipment and the Safety Ground Cover. The Foundation shall provide the City written notice at least three (3) days before such a third-party inspection takes place and shall furnish a copy of the inspection report to the City within a reasonable time after the completion of such inspection.
22. **Manufacturer Warranties.** The City shall follow all applicable requirements to uphold the manufacturer's warranty of the Equipment and Safety Ground Cover.
23. **Annual Inspection.** The Parties agree that the City and the Foundation will cooperate regarding the upkeep and maintenance of the Equipment by the City. The City shall conduct or cause to be conducted an annual inspection of the Equipment and Safety Ground Cover to evaluate the condition and useability of the Safety Ground Cover and Equipment within Mitchell's Landing and produce a list of proposed repairs, replacements, upgrades, and or equipment changes to maintain the safety, operation, and useability of the Equipment and Playground (the "Correction & Repair Proposal"). The Correction & Repair Proposal shall list each part or component of the Equipment that requires repair or replacement together with the estimated cost of conducting the replacement or repair. Within thirty (30) days after the completion of such annual inspection, the Parties shall meet and discuss the results thereof and review the Correction & Repair Proposal. The Foundation must comment on, approve, or deny any proposed replacements, material changes, or new equipment installations to be conducted by the City within thirty (30) days after being provided the Correction & Repair Proposal. The Foundation shall have the right to approve or deny the proposed maintenance, replacements, and restorations to the



Equipment set forth in the Correction & Repair Proposal, and will have an option to fund the additions, maintenance, replacements, or restorations, as a further donation to the Foundation. However, should the condition of the Playground or Equipment thereon pose a safety risk to the public, the City may immediately shut down and close off those unsafe components of Equipment immediately without prior notification to the Foundation. In such event, the City will provide the foundation with notice of the closure and the proposed repair or replacement required to correct the unsafe condition within a reasonable amount of time. The provision does not apply to the general maintenance items such as cleaning, re-mulching, raking the safety ground cover, sanitizing, or daily maintenance of the Equipment and Safety Ground Cover.

24. **Additional Improvements Impacting Mitchell's Landing.** In the event of the installation of improvement to Classen-Steubing Ranch Park in the immediate area in and around Mitchell's Landing, and the desire of the City to expand Mitchell's Landing, the Foundation must approve in writing any new playground equipment, shade covers, PIP safety ground cover additions, or any other park improvements located at or near Mitchell's Landing which might have an impact on the image or public perception of Mitchell's Landing.
25. **Records Retention.** The City shall abide by the City's record retention policy and shall maintain all records related to Mitchell's Landing including, but not limited to, any inspections, maintenance, contracts, subcontracts, or other records for any service rendered to Mitchell's Landing or the Equipment thereon. The Foundation shall have access to these records from the City during the applicable Retention Period. If at the end of any Retention Period there is anticipated or pending litigation concerning Mitchell's Landing or any Equipment or Safety Ground Cover thereon, the City shall retain the records until resolution of such litigation or other such questions.
26. **Record Requests.** In the event the City receives a request from a third party for records or documents related to Mitchell's Landing, the City will notify the Foundation within seven (7) days and process such requests.
27. **Priority Playground Booking.** The City may charge reservation or use fees and may adopt rules and regulations related to such private rentals consistent with the City's public facilities use policies. In order to assist the Foundation in its non-profit mission, including conducting fundraising events for maintaining and improving the Playground and Equipment for the benefit of the City, for the Parties agree to the following:
 - a. During the first thirty (30) days of the operation of Mitchell's Landing, the Foundation shall have access to and receive first priority for booking the Park, Playground, and pavilion for any non-profit events, free of charge;
 - b. Annually the Foundation shall be allowed to book and reserve, without charge, the Park, Playground, and pavilion associated with and closest to Mitchell's Landing for conducting fundraising and friend raising events to raise funds, support, and public awareness of the Foundations non-profit mission.

28. **Special Events for Support of Mitchell's Landing:** In addition to the rights conferred by section 27, above, the City shall work cooperatively with the Foundation to use select facilities within Classen-Steubing Ranch Park, once a year at no charge for Foundation events, such as anniversaries, celebrations, community gatherings, functions, fundraisers, or any other event to benefit the Foundation.
29. **Park Benches.** The City shall include and maintain at least six (6) accessible park benches around the Premises of the Playground, or alternatively, the City shall refer potential bench donors to the Foundation and the Foundation may procure benches from these donors for use on and around the Playground as the Foundation sees fit.
30. **Breaking Ground Ceremony.** The City shall hold a breaking ground ceremony for Mitchell's Landing separate from the opening ceremony of the Park. The Foundation may participate in the planning and funding of the Mitchell's Landing opening ceremony. The Foundation may obtain a media company/firm to cover the Mitchell's Landing opening ceremony. The City shall provide the Foundation with at least eight (8) VIP parking passes for the breaking ground ceremony of Mitchell's Landing and grant the Foundation and its donors access to load and unload food, equipment, and any other necessary items.
31. **Opening Ceremony.** The City shall hold an opening ceremony and a ribbon cutting for Mitchell's Landing separate from the opening ceremony of the Park. The Foundation may participate in the planning and funding of the Mitchell's Landing opening ceremony. The Foundation may obtain a media company/firm to cover the Mitchell's Landing opening ceremony. The City shall provide the Foundation with at least eight (8) VIP parking passes for opening ceremony of Mitchell's Landing and grant the Foundation and its donors access to load and unload food, equipment, and any other necessary items.
32. **Tax Deductible.** The City agrees to cooperate with the Foundation to complete any documentation or additional paperwork necessary or helpful to assist the Foundation in documenting its gift or to make a filing with any government entity or regulator related to the donation(s) made under this Agreement. In the event the tax deductibility of the Contribution is challenged, the City agrees to provide reasonable assistance to the Foundation in contesting the unfavorable determination or ruling by providing documentation and proof the donation was made by the Foundation and its donors and was accepted by the City.
33. **Disclosure of Gift.** The Parties acknowledge that certain state or federal laws now or in the future may require the Foundation to disclose information on donations provided to charitable entities, such as the City. The Foundation may report information about the donation provided under this Agreement, as required by law. Once reported, such information may be publicly accessible. Notwithstanding any other provision in this Agreement, the City understands and agrees that the Foundation reserves the right to post on a website accessible to the public, information regarding funding under this Agreement, whether or not required by law, including the identity of the City, the value of the Contribution, and the purposes for such Contribution, and other information as the Company determines is appropriate.

34. **No Assignment.** Neither party may assign, directly or indirectly, by operation of law, change of control or otherwise, this Agreement or any rights or obligations hereunder, without the prior written consent of the other party.
35. **Right of Reversion.** The parties mutually agree that Donor reserves a right of reversion in and to the title of and all rights of ownership and possession to the Playground Improvements donated under this Agreement and the City accepts the donation made by Foundation hereunder subject to such reservation. The Foundation may exercise said Right of Reversion, and retake possession and control of the Equipment y removing the same from the Playground, should one or more of the following events (“Contingent Event”) occur:
- a. The purposes in sections 2.a. and 2.b. of this Agreement become impracticable to carry out;
 - b. The City changes the name or signage of Mitchell’s Landing without the written consent of Donor;
 - c. Mitchell’s Landing ceases to benefit the surrounding community, as determined in the sole discretion of City;
 - d. The City closes the Park or changes the property it is located on to a use(s) that is not consistent or compatible with the intended use of Mitchell’s Landing;
 - e. The City fails to maintain the Equipment in a reasonably useable and safe condition; or
 - f. The City commits a breach of this Agreement, or is otherwise in default hereunder, and fails to cure such breach or default within a reasonable time after receiving notice.

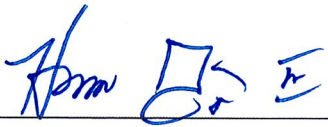
In the event a Contingent Event occurs, the Foundation shall notify the City in writing and the City shall have 90 days to cure the act or omission that is the bases of the Contingent Event. In the event the City fails or refuses to cure the act or omission causing or which is the basis of the Contingent Event within the 90 day period, or as otherwise agreed upon in writing by the Parties, then the Foundation, at its sole expense and require reimbursement for expenses incurred for the removal, may enter onto the Park and remove the Equipment and all other Donated Improvements, and shall leave the Playground in a reasonably level and safe condition so as not to cause any attractive nuisance or unsafe condition after removal of the Donated Improvements is completed (“Removal Process”). The City agrees that the Foundation and its Agents shall have the right to access the Park as reasonably required to conduct the Removal Process in the event the Right of Reversion is executed by Foundation.

36. **No Third-Party Beneficiaries.** This Agreement inures to the benefit of the City and the Foundation only, and no third party shall have any rights under it, except as expressly provided herein.

37. **Amendment;** Entire Agreement. This Agreement may not be amended other than by a writing signed by authorized representatives of both parties. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, understandings, or arrangements.
38. **Governing Law.** This Agreement is governed by the laws of the State of Texas and is made subject to subchapter I of Chapter 271 of the Texas Local Government Code. In the event a dispute arises hereunder venue for resolving such dispute shall be in Bexar County, Texas.

IN WITNESS WHEREOF, executed on this the 16 day of August, 2022.

THE CITY OF SAN ANTONIO,
a Texas Home Rule Municipality

By: 
Title: Director
Date: 8-25-22

Attest: _____
City Clerk

Approved as to form: _____
City Attorney

THE MITCHELL CHANG FOUNDATION,
an IRC 501(c)(3) Non-Profit

By:  _____

Title: Executive Director

Date: August 16, 2022