

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING THE GRANT FUNDING AGREEMENT BETWEEN THE TOWN OF ADDISON AND THE ADDISON ARBOR FOUNDATION, IN AN AMOUNT NOT TO EXCEED \$50,000.00; APPROVAL FOR A DOLLAR TO DOLLAR MATCH OF ADDITIONAL FUNDING NOT TO EXCEED \$15,000.00; AUTHORIZING THE CITY MANAGER TO EXECUTE THE GRANT FUNDING AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the Town of Addison, Texas (“City Council”) has investigated and determined that it is in the best interest of the Town of Addison, Texas (“Town”) to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the Town; and

WHEREAS, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the Town, as determined by the Town; and

WHEREAS, the Addison Arbor Foundation submitted an Application to the Town for consideration; and

WHEREAS, the Town has reviewed the Application and investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the Town and the Addison Arbor Foundation desire to enter into this Agreement to set forth the terms and conditions regarding the Addison Arbor Foundation’s use of the public funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The recitals set forth above are true and correct and are incorporated as if fully set forth herein.

SECTION 2. The Grant Funding Agreement between the Town and the Addison Arbor Foundation in an amount not to exceed \$50,000.00 and providing for a dollar to dollar match of additional funding not to exceed \$15,000.00, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute said agreement.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **13th** day of **OCTOBER** 2020.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A

STATE OF TEXAS §
 § **AGREEMENT FOR GRANT FUNDING**
COUNTY OF DALLAS §

This Agreement for Grant Funding (“Agreement”) is made and entered into as of the 1st day of October, 2020 by and between the Town of Addison, Texas (the “City”) and the Addison Arbor Foundation (the “Organization”).

WITNESSETH:

WHEREAS, the City Council has investigated and determined that it is in the best interest of the City to provide a grant of public funds to various organizations that promote public purposes and benefit the public within the City; and

WHEREAS, the City Council has adopted an application process (“Application”) whereby these organizations may apply for public funds that will be used for public purposes within the City, as determined by the City; and

WHEREAS, the Organization submitted an Application to the City for consideration; and

WHEREAS, the City has reviewed the Application, investigated and determined that the requests set forth in the Application are for a public purpose and will benefit its citizens; and

WHEREAS, the City and Organization desire to enter into this Agreement to set forth the terms and conditions regarding the Organization’s use of the public funds.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the Town of Addison, Texas and the Organization do hereby agree as follows:

I. TERM

The term of this Agreement shall be for a period of one year from the 1st day of October, 2020, through the 30th day of September, 2021, except as otherwise provided for herein, and subject to the earlier termination of this Agreement (“Term”). The Program, hereinafter defined, must be completed during the Term of the Agreement to the satisfaction of the City.

II. GRANT USE

Any Funding received by the Organization pursuant to this Agreement shall be for the benefit of and for the promotion of public purposes within the Addison community and must not conflict with the Organization’s Application which is herein incorporated by reference. This Agreement does not bind the Organization to complete any specific program detailed below, however, the Organization shall, in good faith, complete all programs to the best of their ability

pursuant to this Agreement. If the Organization determines that any program cannot be completed, it shall immediately inform the City.

Accordingly, the Organization shall complete the following program(s) with the assistance of grant funding received by the City (collectively, the "Program"):

- (a) Purchase or commission, and install public art pieces(s) in locations identified in collaboration with the Addison Parks Department. The locations shall be located on Town property, or easements granted to the Town on new construction or existing property. The City must provide prior written approval for the artist, selected artwork and location of the installation;
- (b) Work with City staff to incorporate and/or refresh landscaping, public art, sculptural works and educational activities; and
- (c) Fund the Organization's operating expenses.

The Organization shall submit detailed quarterly program results to the City listing the expenditures made by the Organization with the Funding received pursuant to this Agreement by the following dates:

January 30, 2021
April 30, 2021
July 30, 2021
October 30, 2021

In satisfaction hereof and as determined by the City, the Program may be provided directly by the Organization or funding of the Program may be provided to the City by the Organization. The Program will be provided upon the prior approval by the City. Design for any of the Program provided by the Organization is subject to the City's approval prior to installation thereof.

III. FUNDING

The City shall pay to the Organization the sum of no more than Fifty Thousand and No/100 Dollars (\$50,000.00) ("Funding") as follows: fifty percent (50%) of the Funding shall be paid to the Organization within thirty (30) days of the City's execution of this Agreement, and the remaining fifty percent (50%) of the Funding shall be paid to the Organization on May 30, 2021. However, the Organization may send a written request to the City Manager's Office for an advance of the second fifty percent (50%) distribution prior to May 30, 2021. Granting such an advance of Funding is under the City Manager or City Manager designee's sole discretion. All Funding shall be made contingent upon the Organization's compliance with the Agreement terms and conditions herein. While funding is generally limited to the current fiscal year, due to the nature of the projects that are commissioned by the Organization, it is understood that Programs undertaken by the Organization may not be completed within the Term. If the Organization fails to complete the Program, the Organization may be allowed to continue the Program, provided that it complies with the terms of this Agreement, including quarterly reporting on the expenditure of Funding. If the Organization fails to complete the Program identified herein to the satisfaction of the City within

the Term, then the Organization shall return any and all unexpended Funding to the City immediately upon request, and the Organization may be ineligible for the receipt of Funding the following year.

Notwithstanding anything to the contrary provided herein, the parties agree that the Organization is eligible for a dollar for dollar match not to exceed Fifteen Thousand and No/100 Dollars (\$15,000.00) at the sole discretion and determination of the City, if the Organization can demonstrate to the satisfaction of the City that it has accumulated additional funding from private donations outside of the City within the Term of this Agreement (“Matching Funds”), in accordance with the provisions of **Exhibit “A,”** attached hereto and incorporated herein for all purposes. For the purpose of calculating the Matching Funds, Private Donations, as defined in Exhibit “A” attached hereto and incorporated herein for all purposes, received by the Organization as a result of the North Texas Giving Day on September 17, 2020 may be included in the calculation for Fiscal Year 2021. However, a subsequent North Texas Giving Day within the Fiscal Year 2021 may not be included in the calculation.

IV. RESPONSIBILITY; INDEMNIFICATION

(A) THE ORGANIZATION AGREES TO ASSUME AND DOES HEREBY ASSUME ALL RESPONSIBILITY AND LIABILITY FOR DAMAGES OR INJURIES SUSTAINED BY PERSONS OR PROPERTY, WHETHER REAL OR ASSERTED, BY OR FROM THE PERFORMANCE OF THE PROGRAM PERFORMED AND TO BE PERFORMED HEREUNDER BY THE ORGANIZATION OR BY ITS OFFICIALS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, AGENTS, SERVANTS, INVITEES, GUESTS, VOLUNTEERS, CONTRACTORS, SUBCONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

(B) INDEMNITY OWED BY THE ORGANIZATION. THE ORGANIZATION COVENANTS AND AGREES TO FULLY DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS, INDIVIDUALLY OR COLLECTIVELY, IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES (THE TOWN OF ADDISON, TEXAS AND THE ELECTED AND APPOINTED OFFICIALS, THE OFFICERS, EMPLOYEES, REPRESENTATIVES, AND VOLUNTEERS OF THE TOWN OF ADDISON, TEXAS EACH BEING AN “ADDISON PERSON” AND COLLECTIVELY THE “ADDISON PERSONS”), FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, HARM, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, JUDGMENTS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND SUITS, OF ANY KIND AND NATURE WHATSOEVER MADE UPON OR INCURRED BY ANY ADDISON PERSON, WHETHER DIRECTLY OR INDIRECTLY, (THE “CLAIMS”), THAT ARISE OUT OF, RESULT FROM, OR RELATE TO: (1) THE PROGRAM AS DESCRIBED IN SECTION II OF THIS AGREEMENT; (2) REPRESENTATIONS OR WARRANTIES BY THE ORGANIZATION UNDER THIS AGREEMENT; AND/OR (3) ANY OTHER ACT OR

OMISSION UNDER OR IN PERFORMANCE OF THIS AGREEMENT BY THE ORGANIZATION, OR ANY OWNER, OFFICER, DIRECTOR, MANAGER, EMPLOYEE, AGENT, REPRESENTATIVE, CONSULTANT, CONTRACTOR, SUBCONTRACTOR, LICENSEE, INVITEE, PATRON, GUEST, CUSTOMER, OR CONCESSIONAIRE OF OR FOR THE ORGANIZATION, OR ANY OTHER PERSON OR ENTITY FOR WHOM THE ORGANIZATION IS LEGALLY RESPONSIBLE, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONSULTANTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, INVITEES, PATRONS, GUESTS, CUSTOMERS, AND CONCESSIONAIRES. SUCH DEFENSE, INDEMNITY AND HOLD HARMLESS SHALL AND DOES INCLUDE CLAIMS ALLEGED OR FOUND TO HAVE BEEN CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR GROSS NEGLIGENCE OF ANY ADDISON PERSON, OR CONDUCT BY ANY ADDISON PERSON THAT WOULD GIVE RISE TO STRICT LIABILITY OF ANY KIND.

THE PARTIES SHALL PROMPTLY ADVISE EACH OTHER IN WRITING OF ANY CLAIM OR DEMAND AGAINST ANY ADDISON PERSON OR THE ORGANIZATION RELATED TO OR ARISING OUT OF THE ORGANIZATION'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE ORGANIZATION'S SOLE COST AND EXPENSE (NOT TO EXCEED \$350.00 PER HOUR). THE ADDISON PERSONS SHALL HAVE THE RIGHT, AT THE ADDISON PERSONS' OPTION AND AT OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING THE ORGANIZATION OF ANY OF ITS OBLIGATIONS HEREUNDER.

THE PROVISIONS OF THIS DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION, AND ANY OTHER DEFENSE, INDEMNITY, AND HOLD HARMLESS OBLIGATION SET FORTH IN THIS AGREEMENT, SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

V. TERMINATION

This Agreement may be canceled and terminated by either party at any time and for any reason or no reason upon giving at least thirty (30) days written notice to the other party hereto. Notice of termination shall be sent in compliance with Section XVII herein. IMMEDIATELY UPON TERMINATION OF THIS AGREEMENT, ANY FUNDING NOT PROPERLY ALLOCATED TO THE PROGRAMS HEREIN, AS DETERMINED BY THE CITY, SHALL BE RETURNED.

Upon Agreement termination and payment or tender of any refund, all obligations of the Organization under this Agreement shall be discharged except as otherwise provided herein (e.g., obligations surviving termination of this Agreement). After which, no action shall lie or accrue for additional benefit, consideration or value for or based upon the Program performed under or pursuant to this Agreement.

VI. CONFLICT OF INTEREST

(a) No officer or employee of the City shall have any interest or receive any benefit, direct or indirect, from this Agreement or the proceeds thereof. This prohibition is not intended and should not be construed to preclude payment of expenses legitimately incurred by City officials in the conduct of the City's business. No officer, employee, representative, or volunteer of the Organization shall have any financial interest, direct or indirect, in this Agreement or the proceeds hereof.

(b) For purposes of this section, "benefit" means anything reasonably regarded as an economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include contributions or expenditures made and reported in accordance with any law.

VII. ACCOUNTING

Prior to adopting its annual budget, the Organization shall submit for the City's review a budget showing the use of the Funding provided pursuant to this Agreement, and the Organization shall make such quarterly financial reports to the City, as provided for herein, listing the expenditures made by the Organization from the Funding. The approval of the Organization's annual budget creates a fiduciary duty in the Organization with respect to the Funding provided by this Agreement.

Funding received hereunder from the City may be spent for day to day operations, supplies, salaries and other administrative costs (including the completion of a compilation report), provided that such costs are necessary for the promotion and encouragement of the purposes for which the Funding may be used as described herein.

The Organization shall maintain complete and accurate financial records of all of its revenues, including, without limitation, each expenditure of Funding received pursuant to this Agreement. On request of the City at any time, the Organization shall make all its records available for inspection and review by the City or its designated representative(s). Within ninety (90) days of the end of the Organization's fiscal year, the Organization shall provide the City with a financial statement signed by the Chairman of the Organization's Board of Directors (or other person acceptable to the City) setting forth the Organization's income, expenses, assets and liabilities. **SUCH OBLIGATION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.**

Beginning FY 2017, and every other year thereafter, so long as the Organization is a recipient of grant funding, the Organization shall provide the City financial statement(s) prepared by its accountant or financial officer within ninety (90) days of the end of the applicable fiscal year. Likewise, beginning FY 2018 and every other year thereafter, so long as the Organization is a recipient of grant funding, the City may request a compilation report prepared by an independent accounting firm prior to the end of the applicable fiscal year. The Organization shall deliver the compilation report to the City within one hundred twenty (120) days of the end of the applicable fiscal year. If this Agreement is terminated prior to its expiration, the Organization shall provide such reports as required by the City for the period prior to the expiration for which reports have not been

provided, and such obligation shall survive the termination hereof; and the obligation to provide the reports for the last quarter of this Agreement shall survive the expiration of this Agreement.

All application materials, financial information, quarterly (or other) reports, any other information described herein or required hereunder, and general correspondence with the City must be submitted to the City in electronic format to the City email address specified in the application packet. Additionally, the City may require that such materials, information, reports, and correspondence also be provided to the City in writing a hard-copy, non-electronic format.

VIII. ADDITIONAL REQUIREMENTS OF THE ORGANIZATION

The Organization agrees to the following:

- (a) The City may conduct an on-site visit to the Organization during the Term;
- (b) Within thirty (30) days of the City's execution of this Agreement, the Organization shall provide City with a current list of all Organization board members and a schedule of all board meetings. A representative from the City may choose to attend any scheduled board meetings. The City shall be immediately notified of any changes to the schedule; and
- (c) In any and all marketing material produced by the Organization, the City shall be prominently recognized as a supporter of the Organization through the use of the City designated logo provided.

IX. INDEPENDENT CONTRACTOR

In completing the Program under this Agreement, the relationship between the City and the Organization is that of independent contractor, and the City and the Organization by the execution of this Agreement do not change the independent status of the Organization. The Organization is an independent contractor, and no term or provision of this Agreement or action by the Organization in the performance of this Agreement is intended nor shall be construed as making the Organization the agent, servant or employee of the City, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship, or to allow the City to exercise discretion or control over the manner in which the Organization performs the Program which is described in this Agreement.

X. NON-ASSIGNABILITY; NO THIRD-PARTY BENEFIT

The parties agree the Organization has no authority to assign, transfer, or otherwise convey by any means whatsoever this Agreement or any of the rights, duties or responsibilities hereunder without obtaining the prior written approval of the City. Any attempted assignment, transfer, or other conveyance of this Agreement without such approval shall be null and void and be cause for immediate termination of this Agreement by the City.

This Agreement is solely for the benefit of the parties hereto and is not intended to and shall not be deemed to create or grant any rights, contractual or otherwise, to any third person or entity.

XI. NO PARTNERSHIP, JOINT VENTURE, OR JOINT ENTERPRISE

Nothing contained in this Agreement shall be deemed to constitute that the City and the Organization are partners or joint ventures with each other, or shall be construed or be deemed to establish that their relationship constitutes, or that this Agreement creates, a joint enterprise.

XII. NON-DISCRIMINATION

During the term of this Agreement, the Organization agrees that it shall not discriminate against any employee or applicant for employment because of race, age, color, sex (as defined by applicable state and federal law), religion, ancestry, national origin, disability, veteran status, place of birth, or handicap.

XIII. LEGAL COMPLIANCE; AGREEMENT SUBJECT TO LAWS; RECITALS

The Organization shall observe and abide by, and this Agreement is subject to, all applicable federal, state, and local (including the City) laws, rules, regulations, and policies (including, without limitation, the Charter and Ordinances of the City), as the same currently exist or as they may be hereafter amended. The Organization agrees that any and all records of the Organization, including but not limited to documents which describe, relate to, convey and/or illustrate the obligations, terms and conditions set forth in this Agreement shall be subject to the Texas Public Information Act, Texas Government Code Chapter 552, as amended. The above and foregoing recitals to this Agreement are true and correct and incorporated herein and made a part hereof.

XIV. VENUE; GOVERNING LAW

In the event of any action under this Agreement, exclusive venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

XV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XVI. NO WAIVER; RIGHTS CUMULATIVE

The failure by either party to exercise any right or power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

XVII. NOTICES

All notices, communications and reports, required or permitted under this Agreement shall be personally delivered or mailed to the respective parties using certified mail, return receipt requested, postage prepaid, at the addresses shown below. The City and the Organization agree to provide the other with written notification within five (5) days, if the address for notices, provided below, is changed. Notices by personal delivery shall be deemed delivered upon the date delivered; mailed notices shall be deemed communicated on the date shown on the return receipt. If no date is shown, the mailed notice shall be deemed communicated on the third (3rd) day after depositing the same in the United States mail.

The City’s address:
Attn: City Manager
Town of Addison
5300 Belt Line Road
Dallas, Texas 75254

The Organization’s address:
Dr. Jay M. Ihrig
Addison Arbor Foundation
P.O. Box 1649
Addison, Texas 75001

Email Address for Financial Reports:
aboatright@addisontx.gov

XVIII. SEVERABILITY

The terms of this Agreement are severable, and if any section, paragraph, clause, or other portion of this Agreement shall be found to be illegal, unlawful, unconstitutional or void for any reason, the balance of the Agreement shall remain in full force and effect and the parties shall be deemed to have contracted as if said section, paragraph, clause or portion had not been in the Agreement initially.

XIX. AUTHORITY TO EXECUTE AGREEMENT

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

XX. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement and agreement between the City and the Organization and supersedes all prior negotiations, representations and/or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Organization.

XXI. SOVEREIGN IMMUNITY

The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XXII. NO BOYCOTT ISRAEL

Pursuant to Texas Government Code Chapter 2271, Organization’s execution of this Agreement shall serve as verification that the Organization does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be signed by their proper corporate officers as first above specified, and have caused their proper corporate seal to be hereto affixed the day and year first above written.

TOWN OF ADDISON, TEXAS

ADDISON ARBOR FOUNDATION

By: _____
Wesley S. Pierson, City Manager

By:  _____
Dr. Jay M. Ihrig, President & Director

Date: _____

Date: 10/04/2020

EXHIBIT "A"

**DESCRIPTION OF "MATCHING FUNDS" AND PROCESS
FOR DISTRIBUTION OF MATCHING FUNDS
FOR ADDISON ARBOR FOUNDATION
FROM HOTEL/MOTEL TAX FUNDS**

For every One Dollar of Private Donations (as hereinafter defined) actually received by Addison Arbor Foundation ("AAF"), the City shall, in accordance with the provisions of this Agreement, pay to AAF Matching Funds in an amount up to but not exceeding Fifteen Thousand and No/100 Dollars (\$15,000) for Fiscal Year 2021. In order to receive Matching Funds, AAF shall provide to the City such proof of its receipt of Private Donations as the City shall reasonably require. Beginning October 1, 2020, AAF may make application on or before the 15th day of every three (3) month period for distribution of Private Donations and the City shall pay such matching funds provided the City has received adequate proof, in the City's sole opinion, of the actual receipt of Private Donations by AAF as set forth in each application. The application shall be on a form provided by the City.

For the purposes of this Agreement, the term "Private Donations" shall mean and include: cash funds actually received by AAF during the term hereof from any private donations in the form of cash and received by the AAF on or before September 30, 2021. Pledged amounts shall not count toward the Private Donations for the calculation of Matching Funds.