

AN ORDINANCE 2012 - 04 - 05 - 0251

AUTHORIZING A FUNDING AGREEMENT WITH SPORTS OUTDOOR AND RECREATION (SOAR) PARK FOR THE EXPENDITURE OF UP TO \$100,000.00 FROM THE GENERAL FUND FOR THE OPERATIONS OF MORGAN'S WONDERLAND LOCATED IN CITY COUNCIL DISTRICT 10.

* * * * *

WHEREAS, the Sports Outdoor and Recreation (SOAR) Park is a 501(c)(3) non-profit organization established by the Gordon Hartman Family Foundation to operate and manage Morgan's Wonderland, a 25-acre recreational theme park with a mission to provide unique and positive recreation, social, educational and sensory experiences to special needs individuals of all ages, their families and the general public; and

WHEREAS, opened in April 2010, it is the first theme park in the world designed with special needs individuals in mind; and

WHEREAS, the park is located at the intersection of Thousand Oaks and Wurzbach Parkway in City Council District 10; and

WHEREAS, the 2007 bond program provided \$6.2 million to SOAR for the acquisition of land and development of Morgan's Wonderland and the adjacent SOAR soccer complex; and

WHEREAS, in addition, \$1.05 million was provided to SOAR in 2009 Tax Note Funds for development costs that allowed for the completion and opening of the park; and

WHEREAS, utility expenses (electricity and water/sewer) in an amount up to \$100,000.00 for FY 2012 will be reimbursed to SOAR; and

WHEREAS, the Funding Agreement will expire on September 30, 2012 with no further funding commitment to SOAR after this fiscal year; and

WHEREAS, Morgan's Wonderland 2012 budget and business plan reflects a more sustainable business model; and

WHEREAS, the scope of the marketing plan has been broadened to target the general public in addition to special needs individuals and family members; and

WHEREAS, in addition, cost savings in both labor and overhead expenses are being implemented; **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 authorized to execute a Funding Agreement with the Sports Outdoor and Recreation (SOAR) Park, for the expenditure of up to \$100,000.00 from the General Fund for the operations of Morgan's Wonderland located in City Council District 10. A copy of the agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of \$100,000.00 for this ordinance is available in Fund 11001000, Cost Center 2601050001, General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 3. Payment not to exceed the amount of \$100,000.00 is authorized to the Sports Outdoor and Recreation (SOAR) Park and should be encumbered with a purchase order.

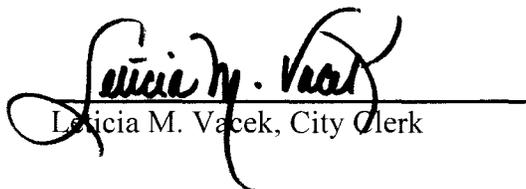
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 5. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

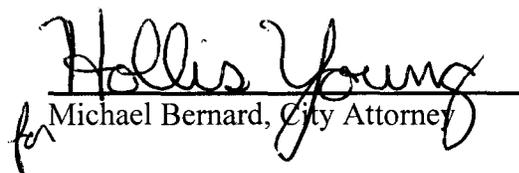
PASSED AND APPROVED this 5th day of April, 2012.

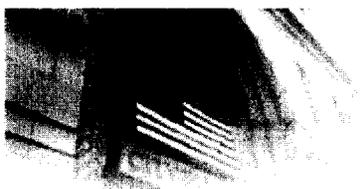

M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 18

Name:	5, 6, 7, 8, 9, 10, 12, 13A, 13B, 13C, 14, 15, 16, 18						
Date:	04/05/2012						
Time:	10:07:27 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Funding Agreement with Sports Outdoor and Recreation (SOAR) Park for the expenditure of up to \$100,000.00 from the General Fund for the operations of Morgan's Wonderland located in City Council District 10. [Ed Belmares, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x			x	
Carlton Soules	District 10		x				

STATE OF TEXAS

COUNTY OF BEXAR FUNDING AGREEMENT

CITY OF SAN ANTONIO

This Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. _____, and Sports, Outdoor and Recreational Park ("SOAR").

WITNESSETH:

WHEREAS, the City has adopted a FY 2012 General Fund budget that includes an allocation of \$100,000 to be used for operating resources for SOAR, a 501 (c) (3) non-profit organization, in support of Morgan's Wonderland;

WHEREAS, City has received and reviewed SOAR's Morgan's Wonderland budget and business plan and finds it acceptable for the purposes of this Agreement; and

NOW THEREFORE:

The parties hereto agree as follows:

1. The term of this Agreement is from the date of execution by both parties through September 30, 2012.
2. SOAR will operate for the benefit of the public the special needs recreational park known as Morgan's Wonderland located at 5223 David Edwards Drive, San Antonio TX ("Project").
3. In order to partially offset SOAR Project operating expenses the City will provide up to \$100,000 ("Funds") for Morgan's Wonderland electrical and water/sewer expenses.
4. City will provide the Funds as outlined below.
 - (a) Not more than once each calendar month, SOAR may request reimbursement of payments made to CPS and/or SAWS for electric and water/sewer consumption that occurred during the period of October 1, 2011 through September 30, 2012.
 - (b) Each request for reimbursement will be accompanied by copies of invoices and evidence of payment by SOAR. SOAR agrees to provide other supporting documentation as may be requested by City.
 - (c) City will review SOAR's reimbursement request and supporting documentation and notify SOAR if any expenditures are determined by City to be outside the permissible parameters of this Agreement.
 - (d) City will provide reimbursement to SOAR within thirty (30) calendar days after receipt of an approved reimbursement request.
 - (e) In the event that SOAR's payments to CPS and SAWS for electrical and water/sewer expenses are less than \$100,000 during the period of October 1, 2011 through September 30, 2012, SOAR and the City, through its Director of Parks and Recreation, may identify and agree upon other Morgan's Wonderland expenses for reimbursement. SOAR acknowledges that City may, through its SBEDA goal setting process, establish subcontracting goals associated with the reimbursement of these additional expenditures.

5. All Funds and accounts into which SOAR may deposit the Funds will be subject to review and/or audit by City.
6. SOAR shall be required to furnish the Parks and Recreation Department an audited financial statement for the items funded by or through the City, prepared by an independent auditor (CPA) within one-hundred and twenty (120) days after the termination of this Agreement. In addition to the audited financial statements or program-specific audit(s), a copy of the management letter (Report on the Conduct of Audit) should be submitted.
7. Payment and financial transactions shall be as follows:
 - (a) An accounting system which accurately reflects all costs chargeable (paid and unpaid) with the Funds is mandatory. A Receipts and Disbursements Ledger of paid invoices relating to the City payments must be maintained which will reflect paid invoices revealing check number, date paid and evidence of goods or services received;
 - (b) All records and files on matters funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City and shall continue to be so available for a period of three (3) years. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, SOAR shall retain the records until the resolution of such litigation or audit.
 - (c) The City shall not be obligated to any third parties (including any subcontractors of SOAR);
 - (d) Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given to SOAR for failure to comply with this Agreement. Specifically, the City may withhold Funding in cases where it determines that SOAR is not in compliance with this Agreement.
8. The City's Department of Parks and Recreation is assigned monitoring, fiscal control, and evaluation of SOAR's use of Funds as set out in this Agreement. Therefore, at such times and in such form as may be required, SOAR shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this Agreement.
9. Should any expense or payment be subsequently disapproved or disallowed as a result of any audit, SOAR will refund such amount to the City. SOAR further authorizes the City to deduct such amount or charge as a claim against future payments.
10. SOAR agrees that neither the Project nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the conduct of political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to, the assignment by SOAR of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as

lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.

11. SOAR agrees that under no circumstances will the Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
12. SOAR agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.
13. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and SOAR.
14. SOAR shall not assign or transfer its interest in this Agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.
15. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

Director
Department of Parks and Recreation
114 West Commerce Street, 11th Floor
San Antonio, Texas 78205

SOAR

5223 David Edwards Drive
San Antonio, Texas 78233

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

16. No elected official, director, officer, agent or employee of City or SOAR shall be charged personally or held contractually liable by or to City or SOAR under any term or provision of this Agreement, or because of any breach thereof, or because of its or this execution, approval, or attempted execution of this Agreement.
17. 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 City, 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 this 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.

18. Should SOAR fail to fulfill, in a timely and proper manner, obligations under this Agreement and (i) it shall not correct any such failure within sixty (60) days following the date the City provides SOAR of written notice of such violation, or (ii) if such default cannot be reasonably cured within sixty (60) days of such notice, if SOAR has failed to begin to cure such matter within sixty (60) day period and diligently pursue such cure thereafter, the City shall thereupon have the right to terminate this Agreement by sending written notice to SOAR of such termination and specify the effective date thereof. SOAR shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.

19. All of the work performed under this Agreement by SOAR shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.

20. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

21. The signer of this Agreement for City and SOAR each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and SOAR respectively, and to bind City and SOAR to all of the terms, conditions, provisions and obligations herein contained.

In witness of which this Agreement has been executed effective the _____ day of _____, 2012.

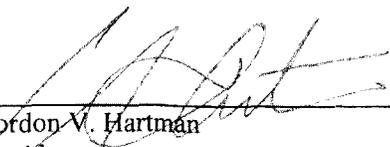
CITY OF SAN ANTONIO:

SOAR:

By: City Manager

Attest:

City Clerk



Gordon V. Hartman
President

APPROVED AS TO FORM:

City Attorney
