

AN ORDINANCE 2010-06-24-0622

AUTHORIZING A CAPITAL FUNDING AGREEMENT IN THE AMOUNT OF \$3,272,847.71 WITH THE HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION (HPARC) FOR THE USE OF 2007 GENERAL OBLIGATION PARK & RECREATION IMPROVEMENT BOND FUNDS AND 2008 CERTIFICATES OF OBLIGATION LOCATED IN COUNCIL DISTRICT 1.

* * * * *

WHEREAS, on August 13, 2009, City Council approved, through Ordinance # 2009-08-13-0025R, the creation of the HemisFair Park Area Redevelopment Corporation (HPARC); and

WHEREAS, the HPARC is charged with the development and redevelopment of HemisFair Park and its surrounding area in order to promote economic development and to stimulate business, housing and commercial activity that is inline with the vision and guiding principles created by the Ad Hoc Committee; and

WHEREAS, City Council appointed the 11-member board comprised of representatives from a cross-section of local stakeholders to include the following: Madison Smith, Board President; Bill Shown, Board Vice-President; Andres Andujar, Board Secretary; Art Hall, Board Treasurer; Gini Garcia, Board Member; Xavier Gonzalez, Board Member; Debra Guerrero, Board Member; Daniel Lopez, Board Member; Sue Ann Pemberton, Board Member; Lisa Schmidt, Board Member; David Zachry, Board Member; and

WHEREAS, since September 2009, HPARC has met 10 times and has created 6 committees that meet regularly: Executive Committee, Planning and Development Committee, Cultural and Civic Institutions, Communications, Historic and Finance; and

WHEREAS, in May 2010, HPARC advertised a Request for Qualifications for master plan services for the HemisFair area and received 21 responses; and

WHEREAS, they created a shortlist of 7 candidates and have invited them to submit a detailed proposal for a scope of work and deliverables; and

WHEREAS, it is anticipated that a consultant will be selected and issued a notice to proceed on or before October 1, 2010; and

WHEREAS, additionally, HPARC will begin restoration of certain homes and other amenities in HemisFair Park; and

WHEREAS, the funding source for the master plan and its associated activities as well as the necessary improvements in HemisFair Park include the 2007 General Obligation Park & Recreation Improvement Bond proceeds and 2008 Certificates of Obligation; and

WHEREAS, in May 2007, voters approved \$2,000,000.00 in bond funding for improvements to HemisFair Park as part of the 2007-2012 Bond Program and in 2008, the City of San Antonio issued \$1,300,000.00 in Certificates of Obligation for improvements to the park. As of June 2010, \$3,272,847.71 is available; and

WHEREAS, each of the above mentioned activities are eligible uses of the bond proceeds and certificates of obligation; and

WHEREAS, however, a capital funding agreement is necessary to provide HPARC access to these funds; and

WHEREAS, the attached capital funding agreement authorizes HPARC to utilize 2007 General Obligation Park & Recreation Improvement Bond funds and 2008 Certificates of Obligation, both allocated for improvements to HemisFair Park, for specific purposes to include the following: Expenses incurred in support of the development of the Master Plan, including legal fees; and Construction, design and other expenditures associated with any additional project that qualify for an eligible use of bond funding and certificates of obligation as detailed in plans and approved by the City Manager's designated representative; and

WHEREAS, costs shall be considered allowable only if so approved in advance by the City Manager's designated representative in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws; regulations and ordinances applicable the HPARC, the Master Plan and/or any additional project;
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 Downtown Operations Department or her designee, is authorized to execute a capital funding agreement in the amount of \$3,272,847.71 with the HemisFair Park Area Redevelopment Corporation (HPARC) for the use of 2007 General Obligation Park & Recreation Improvement Bond funds and 2008 Certificates of Obligation located in Council District 1. A copy of said funding agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Payment in the amount not to exceed \$3,272,847.71 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00090, Hemisfair Park, is authorized and should be encumbered with a purchase order. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

SECTION 3. Additional City Council authorization is required for any contracts exceeding \$50,000.00.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS

SW/mgc
06/24/10
Item# 46

Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

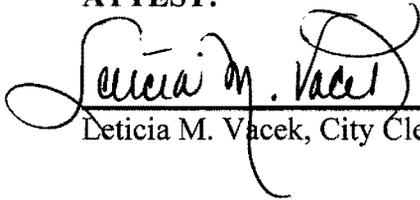
SECTION 5. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 24th day of June, 2010.



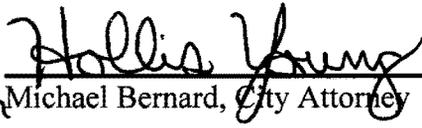
M A Y O R
Julián Castro

ATTEST:



Leticia M. Vacek, City Clerk

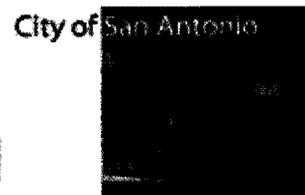
APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
COUNCIL ACTION



Agenda Voting Results - 46

Name:	46						
Date:	06/24/2010						
Time:	05:24:42 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a capital funding agreement in the amount of \$3,272,847.71 with the HemisFair Park Area Redevelopment Corporation (HPARC) for the use of 2007 General Obligation Park & Recreation Improvement Bond funds and 2008 Certificates of Obligation located in Council District 1. [Pat DiGiovanni, Deputy City Manager \ Interim Director, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3				x		
Philip A. Cortez	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Justin Rodriguez	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10	x					

Name:	46						
Date:	06/24/2010						
Time:	05:19:13 PM						
Vote Type:	Motion to Appr w Cond						
Description:	An Ordinance authorizing a capital funding agreement in the amount of \$3,272,847.71 with the HemisFair Park Area Redevelopment Corporation (HPARC) for the use of 2007 General Obligation Park & Recreation Improvement Bond funds and 2008 Certificates of Obligation located in Council District 1. [Pat DiGiovanni, Deputy City Manager \						

STATE OF TEXAS §
 §
COUNTY OF BEXAR § **FUNDING AGREEMENT**

This Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and HemisFair Park Area Redevelopment Corporation, a Texas Local Government Corporation authorized under chapter 431 of the Texas Transportation Code (hereinafter referred to as "Grantee"), acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2007 and received approval from the voters to fund a variety of Parks, Recreation, Open Space, and Athletics Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Parks, Recreation, Open Space, and Athletics Improvements projects approved is a project entitled "HemisFair Park" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Redevelopment of the park;" and

WHEREAS, the City has allocated \$2,000,000 in bond funds for improvement of the Project and has identified Grantee as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, the City has also issued \$1.3 million in Certificates of Obligation for the purpose of making improvements in HemisFair Park; and

WHEREAS, some of the capital funding has already been spent leaving a total amount remaining for this contract of \$3,272,847.71; and

WHEREAS, the City will withhold up to 3% of this amount as City Project Administration Costs; and

WHEREAS, Grantee was created City by Resolution 2009 -08-13-0025R to "assist with planning developing, constructing, managing and financing projects within HemisFair Park and its surrounding area"; and

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

1.01 This agreement shall remain in force and effect for so long as there are remaining funds from those allocated for the allowable purposes.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the master plan, including the hiring and supervising of a qualified consultant, for the HemisFair Park Area ("Master Plan.") by 2012 and any other additional projects, such as the renovation of existing historic homes located in the Park, which have been approved by City ("Additional Projects").

2.02 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President shall be Grantee's Designated Representative responsible for the management of this Agreement.

2.03 The City Manager or her designee shall be City's Designated Representative responsible for the administration of this Agreement on behalf of City and shall have the full power and authority to conduct all City reviews and inspections and to grant all City consents and approvals called for under this Agreement.

2.04 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.02 and 2.03 hereinabove.

2.05 Grantee shall provide to City their plans and specifications for any Additional Projects ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.06 Grantee's Designated Representative, or someone working at his direction, shall obtain a COSA portal account to access the 07 Bond Dashboard. The Dashboard contains the schedules for the bond projects as well as the update forms for providing project status for both the design and construction phase. Grantee shall give City monthly email updates by the 5th day of each month following (i.e. July 5th for June update). Project update information shall be submitted in the form of dates: actual start and actual or expected finish dates. Percent completes are not used in the calculation of the project status.

2.07 Grantee shall submit to the City's Designated Representative for review and approval all future changes to the Plans to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect any project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the City's Designated Representative at the completion of construction of any Additional Project. City shall have the right to withhold funding until such certifications are provided.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, the Master Plan and/or any Additional Project and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Master Plan or any Additional Project.

3.02 Grantee shall utilize an open and competitive process for the selection of any needed contractors for non-professional services paid in whole or in part with City funds. Grantee may utilize on-call contracts and alternative delivery methods in addition to low bid procedures in satisfaction of the required open and competitive process. The Parties shall develop and Grantee shall implement procurement procedures for expenditures over \$3,000.

IV. FUNDING AND ASSISTANCE BY CITY

4.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$3,272,847.71, minus any City Project Administration Costs as allowed for under this agreement.

4.02 Funds in the amount of up to three percent (3%) of the contract amount may be withheld by the City for City Project Administration Costs. Actual City Project Administration Costs will be calculated using the most recent cost allocation plan and indirect cost proposal for the CIMS. Currently the cost allocation plan is designed for CIMS to recover costs from project work efforts based on the actual time spent on the Project, plus markup of non-billable hours, plus the indirect cost rate. Actual City Project Administration Costs will be charged in this manner to the project work effort on a monthly basis until the 3% cap has been charged by the City. At the end of the Project, any excess funds remaining in the work effort within the 3% cap for City Project Administration Costs will be provided to Grantee if allowable expenses are submitted to the City and the City has determined that it would be in its best interest to pay said expenses.

V. ALLOWABLE EXPENDITURES (PREVIOUSLY ARTICLE VII)

5.01 Grantee shall submit a budget for the Master Plan Project to City for approval by October 1, 2010, including any costs to be paid from funds received hereunder. Grantee shall submit budget for Additional Projects as they are submitted for approval. Costs shall be considered allowable only if so approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state

and federal laws; regulations and ordinances applicable to Grantee, the Master Plan and/or any Additional Project. Only the following categories of costs shall be considered allowable:

- Expenses incurred in support of the development of the Master Plan, including legal fees.
- Construction, design and other expenditures associated with an Additional Project as detailed in Plans approved by City's Designated Representative.

5.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee to its employees
- Travel and travel-related expenses, except for those related to the Master Plan or any Additional Project as approved by City.
- Costs or fees for consultant and/or professional services, except for those related to the Master Plan or any Additional Project
- Costs or fees associated with attendance at meetings, seminars, or conferences, except for those related to the Master Plan or any Additional Project
- Costs or fees associated with regular maintenance and operation of the HemisFair Park area.
- Fundraising
- Equipment and Furnishings, unless approved in advance and in writing by City's Designated Representative.
- Advertising, except for any advertising related to the Master Plan or any Additional Project as approved by City's Designated Representative.

5.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Projects. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

6.03 In order to be funded for work completed, Grantee shall submit to the City a report indicating the amount of costs incurred, the payee, the date payable, the purpose of the payment, and provide supporting documentation (i.e. copies of itemized invoices) as requested by the City. Prior to funding, City will have the right to inspect work completed to ensure conformance with the approved Plans.

6.04 All requests for funding shall be submitted through the City's Program Management Portal ("Portal"). Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for funding shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for funding, Grantee must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.05 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (A) Have not been spent by Grantee in material accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.06 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) working days of receipt of completed invoice as defined above.

6.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

7.01 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
- (B) It is capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

VIII. ACCESSIBILITY OF RECORDS

8.01 At any time and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

8.02 Grantee agrees and represents that it will cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

IX. MONITORING AND EVALUATION

9.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and with all other laws, regulations and ordinances related to the performance hereof.

X. INDEMNITY

10.01 City and Grantee are Governmental Units of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. This Agreement will be interpreted according to the Constitution and laws of the State of

Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

XI. INSURANCE

CITY RISK MANAGEMENT NEEDS TO BE CONSULTED ON AN APPROPRIATE INSURANCE PROGRAM FOR HPARC

XII. NONDISCRIMINATION

12.01 Grantee covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which said discrimination Grantee acknowledges is prohibited.

XIII. CONFLICT OF INTEREST

13.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff. City and Grantee mutually agree that the Grantee's Board members are not City Officers for purposes of the prohibited interest in contracts provisions of the Charter of the City of San Antonio or The Ethics Code of the City of San Antonio.

13.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

13.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XIV. POLITICAL ACTIVITY

14.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XV. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

15.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

XVI. CONTRACTING

16.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

16.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XVII. CHANGES AND AMENDMENTS

17.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

17.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVIII. ASSIGNMENTS

18.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XIX. SEVERABILITY OF PROVISIONS

19.01 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.

XX. NON-WAIVER OF PERFORMANCE

20.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

20.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

20.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XXI. ENTIRE AGREEMENT

21.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains 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 hereof and duly executed by the Parties.

XXII. NOTICES

22.01 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: Pat DiGiovanni
Deputy City Manager
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: President of HPARC

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXIII. PARTIES BOUND

23.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXIV. RELATIONSHIP OF PARTIES

24.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXV. TEXAS LAW TO APPLY

25.01 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.

XXVI. GENDER

26.01 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.

XXVII. CAPTIONS

27.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVIII. LEGAL AUTHORITY

28.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

28.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

XXIX. THIRD-PARTY BENEFICIARIES.

29.01 This Agreement is intended to be solely for the benefit of the parties named herein, their successors, and permitted assigns. This agreement is not intended to and does not confer any rights or benefits to any third-party that is not a party signatory to this agreement.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

CITY OF SAN ANTONIO _____

By: _____
Sheryl Sculley
City Manager

By: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY