

AN ORDINANCE 2008-05-08-0374

**APPROVING A \$50,000.00 FUNDING AGREEMENT WITH SAN ANTONIO WOMEN'S PAVILION AT HEMISFAIR PARK, INC. IN SUPPORT OF ENGINEERING AND ARCHITECTURAL SERVICES RELATED TO REDEVELOPMENT OF THE WOMEN'S PAVILION.**

\* \* \* \* \*

**WHEREAS**, as part of the FY 2008 adopted budget approved in September 2007, City Council authorized \$50,000.00 for architectural and engineering (A&E) services related to the Women's Pavilion in Hemisfair Park; and

**WHEREAS**, the proposed funding agreement provides for reimbursement to the San Antonio Women's Pavilion at Hemisfair Park, Inc. for applicable A&E expenditures during Phase I only; **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 \$50,000.00 funding agreement with the San Antonio Women's Pavilion at Hemisfair Park, Incorporated in support of engineering and architectural services related to redevelopment of the Women's Pavilion. A copy of the funding agreement is attached hereto and incorporated herein for all purposes as Attachment I.

**SECTION 2.** Funding for this ordinance is available in Fund 11001000 General Fund, Cost Center 70010990044 Women's Pavilion Hemisfair, General Ledger 5201040 Fees to Professional Contractor as part of the FY08 Budget.

**SECTION 3.** Payment not to exceed \$50,000.00 is authorized to San Antonio Women's Pavilion at Hemisfair Park, Incorporated (SAWPH) 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 shall become effective immediately upon passage by eight (8) 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 8<sup>th</sup> day of May, 2008.



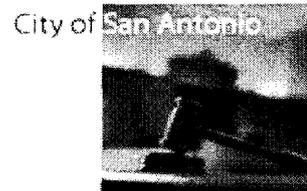
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney



Request for  
**COUNCIL**  
ACTION



### Agenda Voting Results - 11B

<b>Name:</b>	6, 7, 8, 9, 10, 11A, 11B, 12, 13, 14, 16, 17A, 17B, 20						
<b>Date:</b>	05/08/2008						
<b>Time:</b>	11:40:58 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance approving a \$50,000.00 funding agreement with San Antonio Women's Pavilion at Hemisfair Park, Inc. in support of engineering and architectural services related to redevelopment of the Women's Pavilion.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2	x					
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				x



CMS or Ordinance Number: CN4600007168

TSLGRS File Code:1000-25

Document Title:  
CONT - 4600007168

**Commencement Date:**  
**6/3/2008**

**Expiration Date:**  
**9/30/2008**

STATE OF TEXAS     §  
                                  §  
COUNTY OF BEXAR   §

**FUNDING AGREEMENT – WOMEN’S PAVILION**

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. 2008-05-08-0374 dated May 2, 2008, and SAN ANTONIO WOMEN’S PAVILION AT HEMISFAIR PARK, INCORPORATED (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation.

WHEREAS, CITY allocated \$50,000 in General Funds as part of the FY2008 Budget approved by City Council on September 13, 2007 to be used for design and engineering studies related to improvements at the Women’s Pavilion in Hemisfair Park; and

WHEREAS, GRANTEE has agreed to enter into a 25 year lease for the Women’s Pavilion; and

WHEREAS, CITY and GRANTEE desire for GRANTEE to facilitate improvements to the Women’s Pavilion in Hemisfair Park to enable authorized uses including administrative, office, café/restaurant, gift shop, exhibit space, educational events, meetings, and performances,

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 continue in full force and effect for two years from the date of its execution.

**II. GENERAL RESPONSIBILITIES**

2.01 GRANTEE hereby accepts full responsibility for the performance of all services and activities described in this AGREEMENT. The funds provided for under this AGREEMENT shall only be used for design and engineering studies work related to improvements of the Women’s Pavilion at Hemisfair Park.

2.02 CITY shall provide an amount not to exceed \$50,000 for GRANTEE’s allowable expenses for design and engineering studies work related to improvements of the Women’s Pavilion at Hemisfair Park and any costs incurred over \$50,000 shall be at the sole cost and expense of GRANTEE.

2.03 GRANTEE shall provide to CITY at no cost to CITY copies of any and all documents or information related to the design and engineering studies work related to improvements of the Women's Pavilion at Hemisfair Park which have been paid for with the funds provided under this Agreement.

2.04 Unless written notification by GRANTEE to the contrary is received and approved by CITY, GRANTEE'S Board of Directors' President shall be GRANTEE'S designated representative responsible for the management of this AGREEMENT.

2.05 The Downtown Operations Department Director ("Director"), or her designee, is responsible for the administration of this AGREEMENT on behalf of CITY.

2.06 Communications between CITY and GRANTEE shall be directed to the designated representatives of each party as identified in above paragraphs.

### **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 and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may perform design and engineering studies work related to improvements of the Women's Pavilion at Hemisfair Park.

3.02 To the extent applicable, GRANTEE agrees to abide by the provisions of Texas Government Code, Chapter 2254 when acquiring architectural and/or engineering services for which City funds shall be expended, ensuring that selection of provider shall not be made on the basis of competitive bids, but shall be made on the basis of demonstrated competence and qualifications at a fair and reasonable price.

### **IV. LEGAL AUTHORITY**

4.01 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.

4.02 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.

### **V. PERFORMANCE BY GRANTEE**

5.01 GRANTEE, in accordance and compliance with the terms, provisions and requirements of this AGREEMENT, shall oversee all of the activities of design and engineering services firms' work related to improvements at the Women's Pavilion at Hemisfair Park that shall be funded by CITY.

## **VI. FUNDING AND ASSISTANCE BY CITY**

6.01 CITY agrees to reimburse GRANTEE for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this AGREEMENT, the total of all of CITY's reimbursements for eligible expenses shall not exceed the sum of \$50,000.

6.02 CITY shall not be obligated nor liable under this AGREEMENT to any party, other than GRANTEE, for payment of any monies or provision of any goods or services.

## **VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

7.01 GRANTEE agrees to maintain records that will provide accurate, current, and complete disclosure of the status of any funds received and/or expended 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 and request for reimbursement submitted to the CITY.

7.03 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 date of completion of the design and engineering work.

7.04 In order to be reimbursed for work completed, GRANTEE shall submit to the CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, a copy of the design and/or engineering study, and provide supporting documentation (i.e. copies of paid itemized invoices) to the CITY. Prior to payment from CITY, CITY will have the right to inspect to ensure conformance with funding agreement.

7.05 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 strictly in accordance with the terms of this AGREEMENT; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

7.06 Upon termination of this AGREEMENT, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in section 7.05 above as a result of any auditing or monitoring by CITY, GRANTEE shall refund such amount to CITY within thirty (30) calendar days of CITY's written request.

#### **VIII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY**

8.01 Expenditures of the funds provided under this AGREEMENT shall only be allowed if incurred directly and specifically in the performance of and in compliance with this AGREEMENT and all applicable city, state and federal laws, regulations and/or ordinances.

8.02 The following shall not be considered allowable costs under this AGREEMENT:

- Personnel costs, salaries or wages paid directly by GRANTEE
- Travel
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Construction
- Equipment and Furnishings

8.03 Written requests for reimbursement shall be GRANTEE'S responsibility and shall be made thirty (30) days prior to date necessary to permit a thorough review by CITY. Reimbursement for design and engineering work must be approved pursuant to the terms of this AGREEMENT shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

8.04 CITY and GRANTEE agree and understand that the Women's Pavilion in Hemisfair Park is owned by CITY and any improvements made to the facility, shall be the sole property of CITY as set out in the lease agreement between CITY and GRANTEE.

#### **IX. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

9.01 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 financially stable and 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.

#### **X. ACCESSIBILITY OF RECORDS**

10.01 At any time and as often as CITY may deem necessary, upon five (5) calendar 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.

10.02 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.

#### **XI. MONITORING AND EVALUATION**

11.01 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities so as to ensure compliance by GRANTEE with this AGREEMENT and with all other laws, regulations and ordinances related to the performance hereof.

#### **XII. INDEMNITY**

12.01 GRANTEE covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal bodily injury, death and property damage, made upon the city, directly or indirectly arising out of, resulting from or related to GRANTEE'S activities under this AGREEMENT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.** The provisions of this

**INDEMNITY are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall promptly advise the CITY in writing of any claim or demand against the CITY or GRANTEE known to the GRANTEE related to or arising out of GRANTEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.**

**12.02 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article XII, is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

### **XIII. INSURANCE**

13.01 GRANTEE agrees to require design and engineering service contractor(s) to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 13.04 (Insurance table).

13.02 Prior to any request for reimbursement under this Agreement, GRANTEE shall furnish copies of an original completed Certificate(s) of Insurance to the CITY, which shall be clearly labeled "*Women's Pavilion at Hemisfair Park*" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

13.03 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this

Agreement. In no instance will CITY allow modification whereupon CITY may incur increased risk.

13.04 Design and engineering services contractor's financial integrity is of interest to the CITY; therefore, subject to contractor's right to maintain reasonable deductibles in such amounts as are approved by CITY. Contractor(s) shall obtain and maintain in full force and effect for no less than four (4) years from date of execution of contractor's design and/or engineering services agreement with GRANTEE at contractor's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
Architects/Engineers Professional Liability (from design & engineering services contractor)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

13.05 CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). GRANTEE and/or contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. GRANTEE and/or contractor shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Downtown Operations Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

13.06 GRANTEE and contractor agree that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain a provision that requires thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, GRANTEE shall require contractor shall provide a replacement Certificate of

Insurance and applicable endorsements to CITY. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.

13.08 In addition to any other remedies City may have upon GRANTEE's contractors' failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order GRANTEE to stop work hereunder, and/or withhold any payment(s) which become due, to GRANTEE hereunder until contractor demonstrates compliance with the requirements hereof.

13.09 Nothing herein contained shall be construed as limiting in any way the extent to which GRANTEE may be held responsible for payments of damages to persons or property resulting from GRANTEE's and contractor's or its subcontractors' performance of the work covered under this Agreement.

13.10 It is agreed that design and/or engineering services contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

#### **XIV. NONDISCRIMINATION**

14.01 GRANTEE covenants that it, its 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, which said discrimination GRANTEE acknowledges is prohibited.

#### **XV. CONFLICT OF INTEREST**

15.01 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.

15.02 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.

15.03 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.

#### **XVI. POLITICAL ACTIVITY**

16.01 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.

#### **XVII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

17.01 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 in accordance with this Agreement, shall, upon receipt, become the property of CITY. CITY hereby grants GRANTEE an irrevocable unlimited license to make use of the above referenced materials for its purposes in renovating the Women's Pavilion.

#### **XVIII. CONTRACTING**

18.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by design and engineering services firms with this AGREEMENT shall be the responsibility of GRANTEE.

18.02 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.

#### **XIX. CHANGES AND AMENDMENTS**

19.01 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.

19.02 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.

## **XX. ASSIGNMENTS**

20.01 GRANTEE shall not transfer, pledge or otherwise assign this AGREEMENT, any interest in and to same, or any claim arising thereunder, without first obtaining 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 party.

## **XXI. SEVERABILITY OF PROVISIONS**

21.01 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.

## **XXII. NON-WAIVER OF PERFORMANCE**

22.01 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.

22.02 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.

## **XXIII. ENTIRE AGREEMENT**

23.01 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.

#### **XXIV. NOTICES**

24.01 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: Director, Downtown Operations Dept.  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

GRANTEE: San Antonio Women's Pavilion at Hemisfair Park, Inc.  
c/o San Antonio Women's Chamber of Commerce  
600 Hemisfair Plaza Way, Bldg. 217  
San Antonio, Texas 78205

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) calendar days of such change.

#### **XXV. PARTIES BOUND**

25.01 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.

#### **XXVI. RELATIONSHIP OF PARTIES**

26.01 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.

#### **XXVII. TEXAS LAW TO APPLY**

27.01 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.

#### **XXVIII. GENDER**

28.01 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.

**XXIX. CAPTIONS**

29.01 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the 11<sup>th</sup> day of June, 2008.

**CITY OF SAN ANTONIO**

**SAN ANTONIO WOMEN'S PAVILION  
AT HEMISFAIR PARK, INCORPORATED**

By: [Signature]  
Sheryl Sculley  
City Manager

By: [Signature]  
Sherry Kafka Wagner  
Board Chair,  
Women's Pavilion at HemisFair Park,  
Incorporated

ATTEST: [Signature]  
CITY CLERK



APPROVED AS TO FORM:  
[Signature]  
CITY ATTORNEY



CMS or Ordinance Number: OR00000200805080374

TSLGRS File Code: 1000-05

Document Title:  
ORD - 00000200805080374

**Ordinance Date:**  
**5/8/2008**