

AN ORDINANCE

2011-11-17-0960

APPROVING AMENDMENTS TO THE ARTICLES OF INCORPORATION OF THE HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION AND TO THE FUNDING AGREEMENT FOR USE OF 2007 AND 2008 GENERAL OBLIGATION BONDS FOR THE REDEVELOPMENT OF HEMISFAIR PARK.

* * * * *

WHEREAS, on August 13, 2009, City Council created the HemisFair Park Area Redevelopment Corporation (HPARC) to oversee development efforts at HemisFair Park; and

WHEREAS, the Board is comprised of 11 members, with the terms of over half of the members expiring in 2011 and the terms of the remaining members expiring in 2013; and

WHEREAS, in order to ensure an orderly transition of board membership and in an effort to maintain the knowledge and expertise of current board members, the HPARC Board desires to amend its Articles of Incorporation so that fewer members leave the Board at one time; and

WHEREAS, in June 2010, City Council approved a Capital Funding Agreement with HPARC for the Corporation's use of 2007 General Obligation Park & Recreation Improvement Bond funds and 2008 Certificates of Obligation for activities associated with the redevelopment of HemisFair Park and related improvements; and

WHEREAS, in May 2011, City Council allocated an additional \$17.6 million in savings in 2007 Streets & Drainage Bond funding for street and sidewalk improvements around HemisFair Park and the Capital Funding Agreement must be amended to reflect certain obligations placed on HPARC related to these additional funds; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Amendments to the Articles of Incorporation of HPARC set out in Attachment I are hereby approved, subject to the approval of the Amendments by the HPARC Board.

SECTION 2. The City Manager, or her designee, is hereby authorized to execute an Amendment to the Funding Agreement with HPARC to authorize reimbursement of up to \$150,000.00 for services in connection with the Capital Improvements Management Services (CIMS) managed \$17.6 million project for street and sidewalk improvements around HemisFair Park. A copy of the Amendment is set out in Attachment II.

SECTION 3. Funding for the amendment to the Capital Funding Agreement is available from the \$17.6 million in savings in 2007 Streets & Drainage Bond funding that was allocated for HemisFair improvements.

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 allocation 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 take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 17th day of November, 2011.

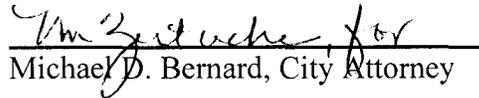

M A Y O R
Julián Castro

ATTEST:

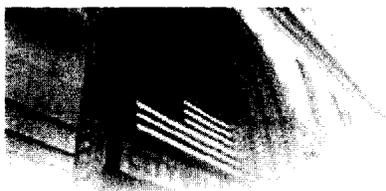


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

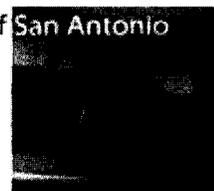


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 26

Name:	4, 5, 6, 7, 8, 9, 10, 11A, 11B, 11C, 12B, 13A, 13E, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 16, 17, 18, 19, 20, 22, 24A, 24B, 24C, 24D, 24E, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37A, 37B, 38A, 38B						
Date:	11/17/2011						
Time:	09:40:58 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing amendments to the HemisFair Park Area Redevelopment Corporation's Articles of Incorporation and Funding Agreement. [Pat DiGiovanni, Deputy City Manager; Mark Brodeur, Director, Center City Development]						
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				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				x
Elisa Chan	District 9	x					
Carlton Soules	District 10		x				

ATTACHMENT I

**SECOND ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION**

Pursuant to the provisions of Sections 431.102 of the Texas Transportation Code, and 394.106 of the Texas Local Government Code, the following Articles of Amendment to the Articles of Incorporation of the HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION (the "Corporation") were adopted by a majority vote of the Board of Directors of the Corporation at a Regular Meeting of the Board of Directors of the Corporation held on December __, 2011, at which meeting a quorum was present, and by a majority vote of the City Council of the City of San Antonio (the "City Council") at a Regular Meeting of the City Council held on November 17, 2011 at which meeting a quorum was present.

ARTICLE ONE

AMENDMENTS TO ARTICLES OF INCORPORATION

Section 1.01. Amendment to Article Four. Article Four of the Articles of Incorporation of the Corporation, as originally adopted, is hereby amended to read as follows to remove certain language and to clarify certain powers related to the Corporation, and which amendment replaces in its entirety the original language of Article Four, and which Article Four as amended shall now read in its entirety as follows:

ARTICLE IV. PURPOSE AND LIMITATIONS

(a) The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code to accomplish certain governmental purposes of the City thereby reducing the burdens on the City, to wit: assist with acquiring property, planning, developing, constructing, managing, maintaining, and financing projects within HemisFair Park (the "Park") and areas adjacent to or near the Park, all at the request of the City Council.

(b) The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to local government corporations incorporated under the Act whether or not so expressly limited in these Articles of Incorporation.

(c) The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001 Texas Civil Practice and Remedies Code of 1986, as amended. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 *et seq.*, Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time, subject to the approval of the Council.

(d) Notwithstanding anything herein, or in the Act to the contrary, the powers granted to the Corporation by the Act to issue any bonds, notes, or other forms of debt instruments permitted by

law to carry out its purposes may be exercised by the Corporation only with the approval thereof from the Council.

(e) In the exercise of its powers described in Article IV (d), the Corporation may enter into loan, trust, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation, all of which agreements, and the specific uses, and the methods of withdrawal and expenditure, of the proceeds the bonds, notes, or other debt instruments proposed to be issued by the Corporation, shall be stated and described in the proceedings authorizing such bonds, notes, or other debt instruments, and must be included as a part of the approval process of the Council required above. In connection with the issuance of its bonds, notes, or other debt instruments, the Corporation shall select consultants, general counsel, bond counsel and financial advisors acceptable to the City Attorney and City Manager.

(f) No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

Section 1.02. Amendment to Article Eight. Article Eight of the Articles of Incorporation of the Corporation, as originally adopted, is hereby amended to read in its entirety as follows:

ARTICLE VIII. BOARD OF DIRECTORS

The affairs of the Corporation shall be managed by a board of directors containing eleven members; provided, however that the number of members of the board of directors may be increased or decreased by a resolution or ordinance approved by the Council.

(A) Board Composition and Qualification. Members of the board of directors shall be at least 18 years of age and may be composed of residents and non-residents of the City; provided, however, that residents of the City must at all times comprise at least a majority of the total members of the board of directors. Members of the City Council and employees and officers of the City are eligible to serve as members of the board of directors.

It is the intention of the City that the board of directors shall be composed of people with demonstrated expertise and experience in a variety of areas, and that at a minimum the board of directors shall include:

- (i) at least one member with demonstrated experience or expertise in the development of commercial real estate;
- (ii) at least one member with demonstrated experience or expertise in the development of multi-family housing;
- (iii) at least one member with demonstrated experience or expertise in real estate investments or finance;
- (iv) at least one member expected to represent the interests of downtown neighborhoods;
- (v) at least one member expected to represent the interests of downtown business;

- (vi) at least one member with expertise in either civil engineering, architecture, landscape design, park design, or urban planning;
- (vii) at least one member expected to represent historic preservation interests or demonstrated experience in the redevelopment of historic properties; and
- (viii) at least one member expected to represent cultural or artistic interests.

In addition to the eleven full members, the board of directors may also have one ad hoc *ex officio* member who shall be the City Manager or his/her designee. The *ex officio* member shall be entitled to receive notice and participate in meetings but shall not have any voting rights and shall not count for purposes of determining the requirement for or presence of a quorum at any board of directors meeting.

(B) Board Member Terms. The eleven members of the board of directors shall be divided into four classes based upon the expiration date of each member’s term of office and so that the terms of no more than three directors shall expire in any year. The table below sets forth the schedule upon which the director terms shall expire. For convenience, each member shall occupy a designated “seat” on the board of directors. Upon the expiration of the current term for each such seat, the next and all successive terms for that director seat shall run for four years. The expiration dates for the current term and the next upcoming term for each director seat are as follows:

SEAT	EXPIRATION DATE OF CURRENT TERM	EXPIRATION DATE OF NEXT UPCOMING TERM	EXPIRATION DATE OF FUTURE TERM	CHANGE IN STATUS
A-1	August 13, 2011	August 13, 2012	August 13, 2016	1-year term appointment
A-2	August 13, 2011	August 13, 2012	August 13, 2016	1-year term appointment
B-1	August 13, 2013	August 13, 2013	August 13, 2017	Replace existing term
B-2	August 13, 2013	August 13, 2013	August 13, 2017	No change
B-3	August 13, 2013	August 13, 2013	August 13, 2017	No change
C-1	August 13, 2013	August 13, 2014	August 13, 2018	1-year extension
C-2	August 13, 2013	August 13, 2014	August 13, 2018	1-year extension
C-3	August 13, 2011	August 13, 2014	August 13, 2018	3-year extension
D-1	August 13, 2011	August 13, 2015	August 13, 2019	Reappointment
D-2	August 13, 2011	August 13, 2015	August 13, 2019	Reappointment
D-3	August 13, 2011	August 13, 2015	August 13, 2019	Reappointment

Any director may serve for additional terms at the discretion of the Council. The Council may remove any director for cause or at any time without cause. In the event a director resigns, is removed from office by the Council or no longer serves for any reason, the Council shall provide for the selection of a replacement director to complete the unexpired term of that director seat.

The directors shall serve without compensation, but shall be entitled to reimbursement for

actual expenses incurred in the performance of duties under the Act. The Corporation and the directors shall be subject to both the Texas Open Meetings Act and the Texas Open Records Act (Chapters 551 and 552 of the Texas Government Code, as amended).

ARTICLE TWO

ADOPTION BY VOTE OF GOVERNING BODIES

Section 2.01. Adoption by Corporation Board of Directors. The aforesated amendments to the Articles of Incorporation and these Articles of Amendment were adopted by majority vote of the members of the Board of Directors of the Corporation at a Regular Meeting at which a quorum was present held on December 18, 2011.

Section 2.02. Adoption by City Council. The aforesated amendments to the Articles of Incorporation and these Articles of Amendment were adopted by majority vote of the members of the City Council of the City of San Antonio at a Regular Meeting at which a quorum was present held on November 17, 2011.

* * *

CORPORATION SIGNATURES TO ARTICLES OF AMENDMENT

DATED: _____

HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, personally appeared Madison Smith, President of the Board of Directors, and Sue Ann Pemberton, Secretary of the Board of Directors, who being by me first duly sworn, declared that they are, respectively, the President and the Secretary of the Board of Directors of the HemisFair Park Area Redevelopment Corporation, a Texas non-profit local government corporation, that they signed the foregoing document as President and Secretary, respectively, of said corporation, and that the statements therein contained are true.

Notary Public – State of Texas

CITY SIGNATURES TO ARTICLES OF AMENDMENT

DATED: _____

CITY OF SAN ANTONIO, TEXAS

By: _____
Julian Castro
Mayor

ATTEST:

By: _____
Leticia Vacek
City Secretary

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersigned Notary Public, personally appeared Julian Castro, Mayor of the City of San Antonio, and Leticia Vacek, City Secretary of the City of San Antonio, who being by me first duly sworn, declared that they are they persons who signed the foregoing document as Mayor and City Secretary, respectively, of the City of San Antonio, and that the statements therein contained are true.

Notary Public – State of Texas

ATTACHMENT II

STATE OF TEXAS §
 §
COUNTY OF BEXAR § **AMENDMENT NO. 2 TO
FUNDING AGREEMENT**

This Amendment No. 2 to Funding 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, 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

WHEREAS, City and Grantee entered into a Funding Agreement authorized by Ordinance No. 2010-06-24-0622 (“Funding Agreement”) which granted to Grantee \$3,272,874.71 for use in capital improvements to HemisFair Park; and

WHEREAS, City and Grantee entered into Amendment No. 1 to the Funding Agreement authorized by Ordinance No. 2011-05-12-0379 (“Amendment No. 1”); and

WHEREAS, the City has identified \$17.6 million in savings in 2007 Streets & Drainage Bond funding which will now be dedicated to design and construction of Cesar Chavez, S. Alamo, Water and Goliad streets as well as the design of Commerce, Market and Bowie/Tower of the Americas Way; and

WHEREAS, City and Grantee have agreed that Grantee will provide services in support of this project in exchange for \$ 150,000 in funding from these bond funds; and

WHEREAS, City and Grantee now wish to amend the Funding Agreement a second time in order to allow for Grantee to provide more services in support of City’s renovation of streets surrounding HemisFair Park (“Street Project”) and to increase the total amount of funding available under this Funding Agreement;

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the amendments to the Funding Agreement. hereinafter described.

1. **Article II, is amended by the insertion of a new section 2.09 which shall read as follows:** “2.09 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all

services and activities described in Scope of Services for the Street Project as detailed in Attachment I to this Second Amendment.”

2. Article IV. section 4.01 is amended to increase the total amount of reimbursement authorized to be paid to Grantee by the amount of \$150,000. The total amount reimbursed under this Funding Agreement shall not exceed \$3,422,874.71.
3. **Article V, is amended by the insertion of a new bullet which shall read as follows:** “Expenses incurred in support of the Street Project as detailed in Attachment I to the Second Amendment.”
4. All other terms and conditions of the Funding Agreement remain unchanged and continue in full force and effect.

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

**HEMISFAIR PARK AREA
REDEVELOPMENT CORPORATION**

By: _____
Sheryl Sculley
City Manager

By: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**Attachment I to Amendment No. 2 to
Funding Agreement between City of San Antonio and HemisFair Park Area
Redevelopment Corporation.**

Page 1 of 3

Scope of Services and Fee Schedule

HPARC Scope of Services for Streets & Drainage work

Per the meeting with City of San Antonio staff, Capital Improvement Management Services (“CIMS”) and HemisFair Park Area Redevelopment Corporation (“HPARC”) on May 27, 2011 it was agreed that all aforementioned entities would work together to develop a complete streets solution for the streets surrounding and within HemisFair Park (“Street Project”). The initial phase that would focus on the design and construction of Durango/Cesar Chavez, S. Alamo, Water and Goliad as well as the design of Commerce, Market and Bowie/Tower of the Americas Way is funded through \$17.6M available through 2007 Bond Savings earmarked for Streets & Drainage.

In support of the Project, HPARC shall undertake the following services as directed by the Director of CIMS:

Design Consultant Selection

- HPARC to support RFQ development and selection process
- HPARC to support negotiations process, including developing the project scope and fee negotiations

Fee: \$25,000

Full payment due upon contract execution

Design Process

- HPARC to support developing milestones for design consultant
- HPARC to be informed of design schedule changes
- HPARC involvement in reviewing and finalizing design, including streets, sidewalks, pedestrian passages, bicycle lanes/paths and transit

Fee: \$25,000

50% payment due at 90% CDs

50% payment due at 100% CDs

Traffic Engineering

- HPARC to consult on engineering reports and studies

Fee: \$5,000

Full payment due upon completion of such reports and studies

**Attachment I to Amendment No. 2 to
Funding Agreement between City of San Antonio and HemisFair Park Area
Redevelopment Corporation.**

Page 2 of 3

Community Engagement

- HPARC to participate throughout the community relations phases including, but not limited to the following activities:
 - Community outreach
 - Neighborhood association meetings
 - Public forums (when necessary)
 - Presentations to organizations/associations

Fee: \$60,000

50% payment due upon first presentation to City Council

50% payment due upon final presentation to City Council

Quality Assurance/Quality Control

- HPARC to lead quality assurance throughout the design phase
- HPARC to participate in quality control during the construction phase

Fee: \$10,000

Full payment due upon construction completion

Administrative

- HPARC to support documentation, including verifying invoices, approving change orders and assisting with other necessary administrative functions, as requested by CIMS

Fee: \$0

Construction

- HPARC to provide support and feedback during the construction phase to include the following tasks:
 - Evaluation and response to RFIs and RFCs
 - Construction bid review and selection
 - Value engineering proposals and solutions

Fee: \$25,000

Full payment due upon construction completion

Total Fee: \$150,000

**Attachment I to Amendment No. 2 to
Funding Agreement between City of San Antonio and HemisFair Park Area
Redevelopment Corporation.**

Page 3 of 3

HPARC Fee Schedule

Milestone	Fee
Contract Execution	\$25,000
90% CDs	\$12,500
100% CDs	\$12,500
Final Engineering Reports	\$5,000
Presentation to City Council	\$30,000
Final Presentation to City Council	\$30,000
Construction Completion	\$35,000
TOTAL	\$150,000