

ORDINANCE 2018-06-07-0411

**AUTHORIZING THE EXECUTION OF A DONATION AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION TO ACCEPT A DONATION IN THE AMOUNT OF \$464,984.00, FUNDED THROUGH THE HEMISFAIR CONSERVANCY, FOR EXPENDITURES ASSOCIATED WITH HEMISFAIR CIVIC PARK, LOCATED IN COUNCIL DISTRICT 1.**

\* \* \* \* \*

**WHEREAS**, on May 6, 2017, San Antonio voters approved the 2017-2022 Bond Program, which authorized \$21,000,000.00 for the Hemisfair Civic Park located within the Hemisfair district; and

**WHEREAS**, the Hemisfair Conservancy fundraised \$464,984.00 for improvements related to Hemisfair and contributed these funds to the Hemisfair Park Area Redevelopment Corporation (HPARC), a local government organization appointed to manage and revitalize the Hemisfair area; and

**WHEREAS**, HPARC determined the Civic Park Project could best benefit from the additional funding and will be used to supplement the existing 2017 General Obligation Bond Funding for the relocation of trees and other construction activities for Civic Park; and

**WHEREAS**, this ordinance authorizes the execution of a Donation Agreement between the City and HPARC to accept the donation in the amount of \$464,984.00, funded through the Hemisfair Conservancy, to supplement the existing 2017 General Obligation Bond Funds allocated for improvements to Hemisfair Civic Park, located in Council District 1; **NOW THEREFORE:**

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

**SECTION 1.** The City Manager, or her designee, is hereby authorized to execute a Donation Agreement with Hemisfair Park Area Redevelopment Corporation and accept a donation in an amount up to \$464,984.00 to fund expenditures associated with Hemisfair Civic Park. A copy of the Agreement in substantially final form is attached hereto as **Attachment I**.

**SECTION 2.** Funds are authorized to be received from Hemisfair Park Area Redevelopment Corporation to SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 23-01670, Hemisfair Civic Park, and the budget shall be revised by increasing WBS element 23-01670-90-10-01, Hemisfair Conservancy Contribution and SAP General Ledger 4502280, Contribution from other Agencies, in the amount of \$464,984.00.


**SECTION 3.** The amount of \$464,984.00 is appropriated in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 23-01670, Hemisfair Civic Park, and the budget shall be revised by increasing SAP WBS Elements as follows:

WBS NO.	WBS NAME	G/L	G/L NAME	PLAN VERSION 0 REVISION/ Appropriation
23-01670-04-02-01	Environmental-City	5201040	Fees to Prof Contr	40,000.00
23-01670-05-02-01	Construction-City	5201140	Construction Cost	424,984.00
			Totals	464,984.00

**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.

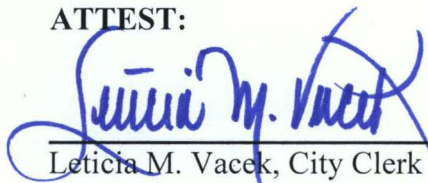
**SECTION 5.** This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective on the en days after passage.

**PASSED and APPROVED** this 7<sup>th</sup> day of June, 2018.



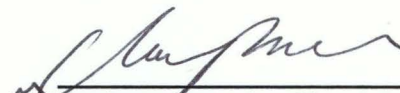
**M A Y O R**  
 Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
 Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
 Andrew Segovia, City Attorney



<b>Agenda Item:</b>	<b>11 ( in consent vote: 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16 )</b>						
<b>Date:</b>	06/07/2018						
<b>Time:</b>	09:15:49 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the execution of a Donation Agreement between the City of San Antonio and the Hemisfair Park Area Redevelopment Corporation (HPARC), to accept a donation in the amount of \$464,984.00, funded through a third party, the Hemisfair Conservancy, for expenditures associated with Hemisfair Civic Park, located in Council District 1. [Lori Houston, Assistant City Manager; Mike Frisbie, Director, Transportation & Capital Improvements						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2	x					
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

KRH  
06/07/18  
Item No. 11

# **Attachment I**

## **Hemisfair Park Area Redevelopment Corporation Donation Agreement**

This Hemisfair Park Area Redevelopment Corporation Donation Agreement (the "Agreement") is made and entered into as of the Effective Date by and among the City of San Antonio, a municipal corporation (the "City") pursuant to Ordinance No. \_\_\_\_\_ approved on \_\_\_\_\_ by the City of San Antonio, a Texas municipal corporation, and Hemisfair Park Area Redevelopment Corporation, a 501(c)3 nonprofit local government corporation (the "Donor"). The City and the Donor are each referred to herein as a "Party" and collectively as the "Parties."

### **RECITALS**

**WHEREAS** On May 6, 2017, San Antonio voters approved the 2017 - 2022 Bond Program, consisting of six propositions totaling \$850,000,000.00. As part of the program, funds in the amount totaling \$21,000,000.00 were included in the Parks, Recreation and Open Space Improvements proposition for improvements to Hemisfair Civic Park ("Civic Park") located within the Hemisfair district; and

**WHEREAS**, the Hemisfair Conservancy fundraised \$464,984.00 for improvements related to Hemisfair and contributed these funds to Donor for improvements to Civic Park, located in Council District 1; and

**WHEREAS**, Donor desires to donate the said sum of \$464,984.00 ("Donation") to City for the Civic Park Project ("Project") to supplement the existing 2017 General Obligation Bond allocated for construction of Hemisfair Civic Park; and

**WHEREAS**, City desires to accept the Donation for the benefit of the Project;

**NOW, THEREFORE**, in consideration of the foregoing and in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

#### **I. PURPOSE**

The Parties have determined that the Donor will provide a donation of \$464,984.00 to the City for planned improvements to Civic Park.

#### **II. DONATION**

As a charitable donation, and without condition other than City's agreements set forth in this Agreement, Donor agrees to transfer to City \$464,984.00 to be paid in full within thirty (30) days of the Effective Date of this Agreement.

#### **III. EFFECTIVE DATE**

This Agreement shall be effective the later of the date that this Agreement is approved by City Council or the date that both parties have executed this Agreement (Effective Date).



#### **IV. MUTUAL REPRESENTATIONS**

The parties represent that they each have the full right, power, and authority to execute and deliver this Agreement and to consummate the transaction provided for without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties, subject to the approval of City's City Council.

#### **V. CITY REPRESENTATIONS**

5.1 City covenants and represents to Donor that, as of the transfer of the Donation to City:

- a) City is a municipality validly existing and in good standing under the laws of the State of Texas, has duly authorized the execution and performance of this Agreement, and such execution and performance will not violate any term of its City Charter;
- b) No payments have been made, directly or indirectly, by or on behalf of City to or for the benefit of Donor or any of Donor's employees or agents who may reasonably be expected to influence Donor's decision to enter into this Agreement, or the donation contemplated by this Agreement.

5.2 City will use the Donation for the limited purpose of funding planned improvements to Civic Park.

5.3 Upon request by the Donor , City will provide:

- a) updates on the progress of the Project,
- b) the specific use of the Donation in connection therewith, and
- c) site visits to the location of the Project in Civic Park, subject to prior notice and scheduling with City.

#### **VI. DONOR'S REPRESENTATIONS.**

Donor covenants and represents to City that, as of the Effective Date of this Agreement and as of the transfer of the Donation, Donor warrants and represents that there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Donor, threatened that could materially adversely affect the transfer of the Donation or Donor's ability to perform under this Agreement;

#### **VI. MEDIA**

All press releases or other public communications of any nature whatsoever relating to the subject matter of this Agreement, and the method of the release for publication thereof, will be subject to the prior written approval by both Parties. Notwithstanding anything herein to the

contrary, Donor acknowledges and understands that City is subject to the Texas Public Information Act ("Act") and that the terms of this Agreement are subject to this Act.

## **VII. NOTICE**

Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, (c) United States mail, postage prepaid, registered or certified mail, or (d) via facsimile, telegram or e-mail, address as follows:

### **If to the City:**

Mike Frisbie, P.E.  
Director, Transportation & Capital Improvements  
P.O. Box 839966  
San Antonio, Texas 78283-3966

### **If to the Donor:**

HPARC  
434 S Alamo  
San Antonio, Texas 78205  
Attention: Andres Andujar, CEO

or to such other address and person as shall be designated from time to time by either party in a written notice to the other in the manner provided for in this paragraph. The notice shall be deemed to have been given at the time of delivery if hand delivered, or in the case of registered or certified mail, three (3) business days after deposit in the United States mail, or if by expedited delivery, upon first attempted delivery on a business day. A party receiving notice that does not comply with the technical requirements for notice under this paragraph may elect to waive any deficiencies and treat the notice as having been properly given.

## **VIII. FORCE MAJEURE.**

The parties to this Agreement shall be excused from performing an obligation under this Agreement if the performance of that obligation is prevented by a condition beyond the control of the parties, such as an act of God, war, public emergency, strike or other labor disturbance. An obligation affected beyond the control of the parties shall be suspended only for the duration of the condition. All parties to this Agreement shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists.



## **VIII. APPLICABLE LAW**

8.1 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.

8.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

## **IX. COMPLIANCE WITH LAWS**

Each party will comply with all applicable federal, state and local laws, rules and regulations which may apply to the performance of their respective obligations under this Agreement.

## **X. AMENDMENTS**

No amendment, modification or termination of this Agreement shall be binding on any party hereto unless it is in writing and signed by both parties.

## **XI. SEVERABILITY**

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.

## **XII. NO WAIVER**

No provision of this Agreement shall be changed, modified, waived or released except by a written waiver or release signed by the party against whom such waiver is asserted.

## **XIII. LEGAL AUTHORITY**

The signatories to this Agreement represent, warrant, assure and guarantee that they have full legal authority to execute this Agreement on behalf of the party for which they are signing and to bind such party to all of the terms, conditions, provisions and obligations herein contained.

## **XIV. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Agreement between the parties hereto and contain 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 be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with this Agreement. This Agreement shall supersede any and all prior written and oral agreements between the Parties.

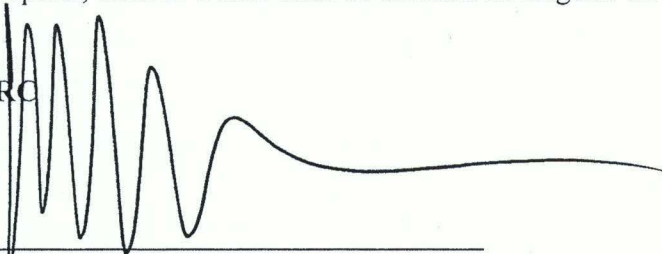
**XV. NO THIRD PARTY BENEFICIARIES**

Nothing herein expressed or implied is intended or shall be construed to give any person other than the parties hereto any rights or remedies under this Agreement.

**XVI. COUNTERPARTS**

For convenience of the parties hereto, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

HPARC

A handwritten signature in black ink, consisting of several sharp, vertical strokes followed by a series of smaller, more fluid strokes, ending in a long horizontal tail.

By: Andres Andujar, CEO

**THE CITY OF SAN ANTONIO**

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney