

AN ORDINANCE

2016-06-30-0530

AUTHORIZING AN AGREEMENT TO USE FUNDS WITH HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION ("HPARC") TO PROVIDE FOR AN ANNUAL DISBURSEMENT OF \$1,687,000.00 FOR OPERATING EXPENSES, SUBJECT TO ANNUAL APPROPRIATION; \$3 MILLION FOR THE CONCEPTUAL DESIGN OF CIVIC PARK; \$18.1 MILLION IN THE ISSUANCE OF PUBLIC DEBT FOR UTILITY INFRASTRUCTURE; AND \$2.4 MILLION FOR HOUSING INCENTIVES IN THE NW QUADRANT P3 DEVELOPMENT.

* * * * *

WHEREAS, on August 13, 2009, City Council approved, through Resolution No. 2009-08-13-0025R, the creation of the Hemisfair Park Area Redevelopment Corporation ("HPARC") and charged HPARC with the development and redevelopment of Hemisfair Park and its surrounding area; and

WHEREAS, since its creation HPARC has undertaken and completed projects within Hemisfair Park that have enhanced downtown San Antonio; and

WHEREAS, the City has previously provided funding to HPARC for capital improvements and operations; and

WHEREAS, the City desires to provide additional funding to HPARC to assist in operating expenses, debt financing of utility infrastructure improvements, conceptual design of Civic Park and housing incentives for Public Private Partnerships (P3s); **NOW THEREFORE:**

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

SECTION 1. The City Council approves the terms and conditions of an Agreement to Use Funds with the Hemisfair Park Area Redevelopment Corporation (HPARC) to provide for an annual disbursement of \$1,687,000 for operating expense, \$3 million for the conceptual design of Civic Park, \$18.1 million in the issuance of public debt for utility infrastructure and \$2.4 million for housing incentives in the NW Quadrant P3 development.

SECTION 2. The City Manager or her designee is authorized to execute an Agreement to Use Funds with HPARC in accordance with the terms and conditions of this Ordinance. A copy of the Agreement, in substantially final form, is attached to this Ordinance as **Attachment I**. The final agreement shall be filed with this Ordinance upon execution. The City Manager or her designee is further authorized to execute amendments to the Agreement which are not financial in nature and are deemed necessary by the City Attorney to carry out the intent of this Ordinance.

SECTION 3. Funding in the amount of \$2,400,000.00 for this Ordinance is available in Fund 29104001, Cost Center 1909020001, General Ledger 5201040, as part of the Fiscal Year 2016 and subsequent budgets and payment is authorized to Hemisfair Park Area Redevelopment Corporation (HPARC).

SECTION 4. Funds generated by this Ordinance for Ground Lease income will be deposited into Fund 29104001, Internal Order 219000000162, GL 4407720.

SECTION 5. The amount of \$3,000,000.00 is appropriated in SAP Fund 11001000, General Fund, SAP Internal Order # 3900000001XXX, SAP GL account 6102100 – Interfund Transfer out entitled From 11001000 to 40-00357-90-14-01. The amount of \$3,000,000.00 is authorized to be transferred to SAP Fund 45099000.

SECTION 6. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00357, Hemisfair Park, shall be revised by increasing SAP WBS Element 40-00357-14-01 entitled Transfer from I/O# 3900000001XXX, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$3,000,000.00.

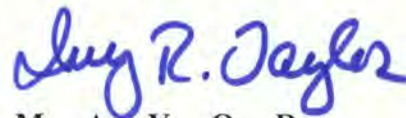
SECTION 7. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00357, Hemisfair Park, shall be revised by increasing SAP WBS Element 40-00357-01-02-01-02 entitled Design-Civic Park, SAP GL account 5201170, by the amount of \$3,000,000.00.

SECTION 8. Future funding for HPARC Operations is contingent upon availability of funds in Fund 29104001, Cost Center 1909030001, and City Council approval; payment is authorized to Hemisfair Park Area Redevelopment Corporation (HPARC).

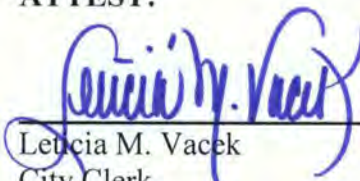
SECTION 9. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 10. This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 30th day of June, 2016.

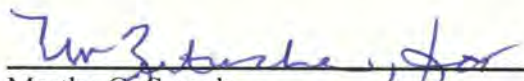

M A Y O R
Ivy R. Taylor

ATTEST:



Lucinda M. Vacek
City Clerk

APPROVED AS TO FORM:



Martha G. Sepeda
Acting City Attorney

Agenda Item:	39A (in consent vote: 4, 6, 7, 8, 9, 10, 11, 12A, 12B, 13, 15, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 35, 36, 37, 39A, 39B)						
Date:	06/30/2016						
Time:	09:25:19 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an Agreement to Use Funds with HPARC to provide for an annual disbursement of \$1,687,000.00 for operating expenses subject to annual appropriation, \$3 million for the conceptual design of Civic Park; \$18.1 million in the issuance of public debt for utility infrastructure; and \$2.4 million for housing incentives in the NW Quadrant P3 Development.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

ATTACHMENT I

STATE OF TEXAS

§
§
§

COUNTY OF BEXAR

**AGREEMENT TO USE
FUNDS OF THE
CITY OF SAN ANTONIO**

This Agreement to Use Funds of the City of San Antonio (the "Agreement") is entered into by and between the CITY OF SAN ANTONIO, a home-rule municipality, situated within Bexar County, Texas (hereinafter called "CITY"), acting by and through its City Manager or designee, pursuant to Ordinance No. 2016-06_--_-- passed and approved on June ____, 2016 and the Hemisfair Park Area Redevelopment Corporation, (hereinafter referred to as "HPARC"), a Texas Local Government Corporation under as defined under Chapter 431 of Texas Transportation Code. The CITY and HPARC may separately be referred to herein as the "Party" and together, as the "Parties."

ARTICLE I. PURPOSE

1.01 The purpose of this Agreement is to establish the terms and conditions of a transfer of public money from CITY to HPARC to be used to lessen the burdens of the CITY by assuming in part the City's obligations or objectives that relate to the planning, development, operation and maintenance of publicly-owned property.

1.02 HPARC understands and agrees that this Agreement is subject to mutual termination in compliance with Article XIII of this Agreement. Either Party shall have the option of terminating this Agreement by giving the other Party no less than sixty (60) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of sixty (60) days following the day on which such notice is sent. If either Party exercises the option of terminating this Agreement, then upon termination any and all unused funds either allocated and in possession of HPARC or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to HPARC under the terms of this Agreement; or (2) retain any and all funds allocated but not distributed to HPARC.

1.03 HPARC understands and agrees that the goals and performance measures in this Agreement may be revised and updated by and at the discretion of the Director of the Center City Development and Operations Department (CCDO) of the City of San Antonio ("Director") to further the intent of this Agreement. Therefore, HPARC agrees that, at such time as any revisions are so made during the Term hereof, this Agreement will be amended to include such revisions. In the event HPARC does not agree to any changes, HPARC shall have the option of terminating this Agreement by giving sixty (60) days written notice to CITY in compliance with Article XVIII of this Agreement. HPARC shall have the right to exercise such option within sixty (60) days of receipt of notice of any such revisions.

1.04 HPARC understands and agrees that this Agreement is subject to a general reduction in funding by the City Council of CITY. Should CITY implement a reduction in General Fund expenditures, then agreements funded by CITY's General Fund, including this Agreement, may, at CITY's option, be reduced in a like manner. CITY will attempt to provide

HPARC with as much advance notice of a potential funding reduction as is possible to allow HPARC to make budget adjustments.

1.05 In no event shall CITY be liable for any expense of HPARC not eligible or allowable hereunder. "Eligible expenses" shall be those expenses directly related to HPARC personnel, fundraising efforts, Public-Private partnership initiatives, consultants and as otherwise set forth in this Agreement and may include "other expenses" that the Director, in the Director's sole discretion, determines are eligible expenditures under this Agreement. In order to determine if an expense is allowable as an "other expense", HPARC shall seek the Director's written approval prior to the expenditure.

1.06 HPARC covenants and agrees that HPARC shall have exclusive control of, and exclusive right to control, the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and HPARC, its officers, agents, employees, contractors, subcontractors and consultants; and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and HPARC. The Parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the HPARC under this Agreement and that the HPARC has no authority to bind the City.

ARTICLE II. TERM, AUTHORITY, LITIGATION AND ACCOUNT

2.01 Subject to the termination rights set forth in Section 1.02, above, or otherwise provided herein, the term of this Agreement ("Term") shall be four (4) years, commencing October 1, 2016 and ending September 30, 2020. Each twelve month period during the Term is referred to in this Agreement as a "Fiscal Year."

2.02 The City Manager designates the Director, or her designee, as CITY's representative for the purposes of this Agreement. The City Manager may designate a different CITY representative by giving HPARC notice thereof in the manner provided in Article XX, below. HPARC shall report to the Director or her designee, who may modify the goals and performance measures of this Agreement as necessary to further the intent of the Agreement. HPARC's diligence and success, as determined solely by the Director, in performing its achieving its goals and performing its duties and responsibilities under this Agreement may determine future funding commitments by CITY to HPARC.

2.03 No funds of CITY may be used, either directly or indirectly, by HPARC to pay costs or attorneys' fees in any adversarial proceeding, including (without limitation) proceedings against the CITY.

2.04 Without limiting the generality of Section 2.03, above, if HPARC files and/or pursues an adversarial proceeding against the CITY, this AGREEMENT, all access to the funding provided under this Agreement and/or HPARC's eligibility for consideration for future funding may terminate while any adversarial proceeding against the CITY remain unresolved, at the CITY's sole option and discretion.

2.05 For purposes of this Agreement, the term “adversarial proceeding” includes any action brought or filed by HPARC in any state, federal or municipal court, as well as any state, federal or municipal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

ARTICLE III. CITY FUNDING COMMITMENTS

3.01 HPARC Operations. Pursuant to Ordinance No. 2016-06-__-__, passed and approved on June ____, 2016, CITY agrees to disburse to HPARC an annual amount of ONE MILLION SIX HUNDRED EIGHTY SEVEN THOUSAND DOLLARS (\$1,687,000.00) in each Fiscal Year during the Term, subject to reduction under Section 3.04(c) below if HPARC’s fails to fund the Debt Service Amount (defined and described in Section 3.04, below), and upon the following terms and conditions:

a. These funds shall be deposited in an account separate from all other HPARC funds and shall not be commingled with any other account of HPARC. Together with any and all interest earned thereon and/or investment income and/or any other revenue related to these funds, all such funds are referred to in this Agreement as the “CITY FUNDS.”

b. CITY FUNDS shall be used by HPARC only for Eligible Expenses.

c. The annual amount described above shall be disbursed to HPARC in two (2) equal payments each Fiscal Year, upon HPARC’s request for disbursement. The Initial Disbursement in a Fiscal Year (“Initial Disbursement”) shall be disbursed on or after October 1 of the Fiscal Year, and the second payment (“Second Disbursement”) shall occur on or after April 1 of the Fiscal Year. HPARC shall not request a disbursement until the adoption of the City’s annual budget for the subject Fiscal Year.

d. Each disbursement, whether an Initial Disbursement or a Second Disbursement, will not be made unless and until CITY has received HPARC’s adopted annual operating and capital budget for such Fiscal Year, which budget shall include the following:

- i. HPARC’s proposed use of the disbursement;
- ii. HPARC’s then current organizational chart that identifies positions and names of HPARC’s officers, directors and employees; and
- iii. Salaries and healthcare, retirement, bonuses, and other employee costs for all employees.

e. Each request for an Initial Disbursement or a Second Disbursement shall be accompanied by a current fundraising report from the Hemisfair Conservancy.

3.02 Funding for Park Maintenance. CITY will fund and staff the Yanaguana Garden and the future parks identified in the Hemisfair Master Plan as the Civic Park and the Tower Park in accordance with budgets to be developed by CITY in consultation with HPARC.

3.03 Funding for Civic Park Design. HPARC and CITY estimate, as of the date of this Agreement, that the design work for the Civic Park will require \$3,000,000.00. CITY shall fund such amount provided that the Civic Park is designed in a manner that would permit a phased development acceptable to CITY.

3.04 Funding for Civic Park Utility Infrastructure. HPARC and CITY estimate, as of the date of this Agreement, that the utility infrastructure for the Civic Park will require \$18,100,000. CITY shall issue public debt to generate the required funding to pay for such utility infrastructure (the "Infrastructure Debt"), subject to the following conditions:

a. HPARC shall fund all required, regularly scheduled debt service on the Infrastructure Debt (the "Debt Service Amount") until the Infrastructure Debt has been fully paid and retired, in the manner set forth below.

b. In each Fiscal Year during the Term, CITY will reduce the Initial Disbursement and Second Disbursement of the CITY FUNDS by the amount necessary to fund the Debt Service Amount for such Fiscal Year. All amounts in excess of the Debt Service Amount shall be paid directly to HPARC on the schedule set forth above.

c. Until the Infrastructure Debt has been fully repaid and retired, all revenues payable to HPARC from the NW Quadrant P3 development, including the ground lease tenant's payments under the terms of its development sublease (collectively, the "Development Revenue") shall be paid to CITY, and HPARC shall ensure that the development sublease and all related agreements shall obligate the ground lease tenant to pay all Development Revenue directly to CITY until the Infrastructure Debt has been fully repaid and retired. Upon receipt, the City shall retain the portion of the Development Revenues necessary to pay the Debt Service Amount and transfer the remainder of the Development Revenues to HPARC and the obligation to transfer such remainder to HPARC shall be an obligation that survives the expiration or earlier termination of this Agreement.

3.05 Incentives for Housing in NW Quadrant P3 Development. CITY will provide additional funding to HPARC of \$2,400,000.00 payable in three (3) annual payments of \$800,000.00 each, commencing in Fiscal Year 2017 (the "Housing Incentive Funding"). In consideration of the Housing Incentive Funding, HPARC agrees to provide the developer of the NW Quadrant P3 Development with discounted lease payments in an amount roughly equivalent to the sum of the Housing Incentive Funding and require that the developer of the NW Quadrant P3 Development pass the benefit of such funding through to the sub-developer and owner of the multi-family housing project to be developed as part of the NW Quadrant P3 Development. Upon receipt, the Housing Incentive Funding may be used by HPARC to fund its operations and/or satisfy its obligations to fund the Debt Service Amount.

ARTICLE IV. HPARC REQUIREMENTS

4.01 Amendment to HPARC Articles of Incorporation. As a condition precedent to disbursement of any CITY FUNDS, HPARC shall cooperate with City Council to amend its Articles of Incorporation to make the changes to its Board of Directors, as follows:

a. The City Manager of CITY, or her designee, shall be an ex-officio voting member of the HPARC Board of Directors;

b. The Chief Financial Officer of CITY, or his designee, shall be an ex-officio voting member of the HPARC Board of Directors; and

c. Individuals who are not members of the HPARC Board of Directors are eligible to serve on existing and future committees established by the HPARC Board of Directors.

4.02 HPARC Duties and Responsibilities. In consideration of CITY'S agreement to provide the CITY FUNDS pursuant to this Agreement and subject to revisions by the Director pursuant to Section 2.02, above, HPARC shall:

- a. Provide the Debt Service Amounts to CITY;
- b. On or before June 2018, develop an activation plan for the Civic Park;
- c. Inform the public concerning the proposed Civic Park design concepts and confirm public support for the proposed design concepts prior to implementation;
- d. On or before January 1, 2017, complete an agreement for the NW Quadrant P3 Development that requires substantial completion prior to December 31, 2021, subject to the terms and conditions set forth in the NWQ Development Sublease approved by City Council;
- e. Enforce the terms of the Development Sublease for the Acequia Lofts Housing Project in an effort to ensure the timely completion of the Acequia Lofts Housing Project in accordance with the executed Development Sublease;
- f. Continue activation efforts for the Yanaguana Garden;
- g. Diligently market Public-Private Partnership ("P3 Program") opportunities in accordance with the Guidelines approved by HPARC's Board of Directors on June 13, 2014, for all development parcels covered by the Master Lease between the Hemisfair Park Public Facilities Corporation, as landlord, and HPARC, as tenant; and
- h. On or before September 30th of each year, provide documentation from the Hemisfair Conservancy confirming fundraising during the Fiscal Year ending on such September 30th of an amount greater than the amount of the funding support provided to the Hemisfair Conservancy by HPARC during such Fiscal Year.

ARTICLE V. COMPLIANCE

CITY's CCDO is assigned monitoring responsibility for HPARC's compliance with and performance of this Agreement.

5.01 HPARC shall provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of HPARC's books, records and files on the objectives covered by this Agreement.

5.02 An accounting system using generally-accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory. HPARC understands that CITY may require any and all books, records and files of HPARC necessary to ensure HPARC's compliance and use of generally-accepted governmental accounting principles

5.03 All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date of this Agreement. However, if during the course of this three-year period, an audit or investigation of the HPARC begins, then HPARC is required to maintain said records until such time as the audit or investigation is completely finished, plus three (3) years thereafter.

5.04 HPARC agrees that during the Term of this Agreement, any duly-authorized representative of CCDO shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this Agreement.

5.05 Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, HPARC shall immediately refund such amount to CITY; provided, however, that such refund may be payable with CITY FUNDS. HPARC further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CCDO has the express authority to deduct such claims from subsequent reimbursements.

5.06 The submission of falsified information or the failure to timely submit all information by HPARC as requested by CITY is grounds for termination of this Agreement per Section 13.01.

5.07 HPARC agrees to provide CITY with the names and license registration of any and all HPARC employees who have professional or occupational licenses regulated by State law and whose activities pursuant to such licenses contribute toward, coordinate with, or facilitate the performance of this Agreement.

5.08 HPARC shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and abuse of funds.

5.09 HPARC agrees to establish internal procedures that ensure employees funded or partially-funded by this Agreement have an established complaint and grievance policy.

5.10 HPARC agrees to comply with, and require compliance by any and all contractors and professional consultants performing work in connection with any procurement of product, infrastructure or service that will be paid for out of the CITY FUNDS, all applicable federal, state and local laws, rules and regulations including, but not limited to, the Fair Labor Standards Act, the Equal Pay Act and the Equal Employment Opportunity Act, all as amended and as applicable.

5.11 Non-Discrimination. As a party to this contract, HPARC understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

5.12 As a condition of entering into this Agreement, HPARC represents and warrants that it has complied with, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of CITY's SBEDA Ordinance No. 2010-06-17-0531. As part of such compliance, HPARC shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers or commercial customers, nor shall HPARC retaliate against any person for reporting instances of such discrimination. HPARC shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. HPARC understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. HPARC shall incorporate this clause into each of its subcontractor and supplier agreements entered into pursuant to CITY contracts.

5.13 Insofar as practical, in carrying out the terms of this Agreement, HPARC shall use a good faith effort to use the employment and training programs of CITY.

5.14 HPARC will complete and submit CITY's Ethic's Disclosure Form prior to HPARC'S receipt of any CITY FUNDS.

5.15 HPARC agrees that CITY may carry out monitoring and evaluation of activities to ensure HPARC's compliance with this Agreement.

ARTICLE VI. RECORDS, REPORTS AND AUDIT RIGHTS

6.01 HPARC shall maintain, in its San Antonio offices, all books and financial records in accordance with generally-accepted accounting principles for governmental entities and as may be reasonably prescribed by CITY's Chief Financial Officer, which reflect all expenditures made from the CITY FUNDS, including work by subcontractors. Such books and financial records, together with any other documentation necessary for verification of HPARC'S compliance with the terms of this Agreement, shall be made available to CITY on request through the EDD Director or the City Auditor or their representatives. CITY shall have the authority to audit, examine and make excerpts or transcripts from said books, records and documentation regarding all expenditures related to this Agreement. HPARC'S record system shall contain sufficient documentation to provide full support and justification for each expenditure made from CITY FUNDS. CITY's Auditor or his designee may review and approve HPARC'S system of internal accounting and administrative controls at any time during the term of this Agreement to assure compliance by HPARC.

6.02 HPARC shall submit to CITY's CCDO Director, on a **semi-annual** basis, the Consolidated Balance Sheet, Statement of Support and Revenue, Statement of Changes in

Financial Position of the HPARC and a line item Summary of Expenditures paid from CITY FUNDS. These reports shall be prepared by the 30th of the month following the end of the reporting quarter. Additionally, HPARC agrees to allow CITY to review all books and financial reports of HPARC pertaining to the CITY FUNDS on an **annual** basis.

6.03 HPARC shall submit to the Director and CITY Auditor, on an **annual** basis, a financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for governmental entities within one hundred and twenty (120) days of HPARC'S fiscal year end. The audited financial statement shall include a detailed schedule of receipts and expenditures of CITY FUNDS by budgeted cost category. It is imperative any auditor performing an audit of HPARC read the entire Agreement, including all attachments, if any, between the CITY and HPARC, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation. HPARC shall submit the audited financial statements and any management letter prepared by the independent CPA to both the Center City Development Office, P.O. Box 839966, San Antonio, Texas 78238-3966, and to the Office of the City Auditor, 111 Soledad, Suite 600, San Antonio, Texas, 78205.

6.04 During the term of this Agreement, HPARC shall cause to be delivered to Director copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. Subject to City Council approval of the required amendment to the HPARC Articles of Incorporation and Bylaws, HPARC understands and agrees that CITY shall have two (2) ex officio voting members on the Board of Directors, as outlined in its amended Articles of Incorporation.

ARTICLE VII. INSURANCE

7.01 HPARC agrees that upon entering a contract for infrastructure or capital improvement construction, if any, to be paid for out of the CITY FUNDS, HPARC, in accordance with this Agreement, shall cause its contractors or subcontractors to provide proof of insurance issued by a company admitted to do business in the State of Texas, and rated VII (A-) or better by A.M. Best Co., in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Commercial General Liability - to include coverage for the following where the general exposure exists	Bodily Injury and Property Damage: <u>\$1,000,000</u> , per occurrence; \$2,000,000 aggregate or its equivalent in Umbrella or Excess Liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Broad Form Property Damage including Fire Legal Liability	
(e) Contractual Liability	

- | | |
|--|---|
| 2. Business Automobile Liability Insurance - to include coverage for: | Combined Single Limit for Bodily Injury and Property Damage: <u>\$1,000,000</u> |
| <ul style="list-style-type: none"> (a) Owned/Leased Automobiles (b) Non-Owned Automobiles (c) Hired Automobiles | |
| 3. Builders Risk* | Amount of Contract |
| 4. Commercial Crime | Amount of Contract |

*Where Applicable

7.02 HPARC agrees that contractor(s) shall not commence any work under its (their) contract(s) until all insurance certificates have been provided to and approved by CITY. Neither HPARC, the contractor nor any agent thereof, shall commence any work until all insurance required of the contractor(s) has been obtained, reviewed and approved by CITY. Approval by CITY shall not relieve or decrease the liability of the contractor(s).

7.03 Premiums chargeable for such insurance may come from CITY FUNDS, and the insurance shall remain in force during the term of the contract, or any extension thereof.

7.04 HPARC further agrees that with respect to the above-required insurance, CITY shall:

- A. be provided with a Waiver of Subrogation, but only as it pertains to Workers' Compensation and Employer's Liability;
- B. be provided with thirty (30) days advance notice in writing of non-renewal, cancellation or material change; and
- C. be provided with a Certificate of Insurance(s), evidencing the above-required insurance, prior to the commencement of any work. Said Certificates of Insurance(s) and all notices required herein shall be provided to:
 - 1) Director, Center City Development Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.
 - 2) City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966.

Copies of insurance policies shall be kept in HPARC'S office and shall be made available for inspection by CITY.

ARTICLE VIII. CONSTRUCTION PROVISIONS

It is not anticipated that construction or infrastructure activities will be undertaken using the CITY FUNDS provided under this Agreement. However, to the extent that they are, the following provisions shall apply:

8.01 If infrastructure changes or other construction is to be undertaken with CITY FUNDS, then HPARC, or its contractors and subcontractors shall provide payment, performance and subdivision bonds, or such other similar cash equivalent or letter of credit, provided same is approved by the City Attorney and the Chief Financial Officer, that names CITY as Obligee and shall submit proof of same to CITY, before any CITY FUNDS-funded infrastructure work commences.

8.02 By subsequent written agreement, HPARC, by Board resolution, and CITY, after approval by the City's Director of Transportation and Capital Improvements Department and the City Attorney, may agree to hold one or more federally-insured certificates of deposit or U.S. Treasury securities to guarantee subdivision work. Without further approval or authorization of the City Council, the City Manager is hereby authorized to execute any such agreement, and CITY and the City Planning Commission may accept such agreement in lieu of the subdivision performance bond normally required. Provided, however, that any agreement reached pursuant to this section must be attached to this Agreement as a separate appendix, and shall be included as part of the official, public records of the City Clerk. Provided further, that any such agreement shall be valid only if CITY retains the securities set aside in lieu of the subdivision bond. In case of default by HPARC on subdivision work, it is also provided that first use of the set-aside funds and interest/investment earnings shall be for performance of the subdivision work by CITY in any legal manner as CITY may choose.

8.03 Compliance with the Davis-Bacon and the Copeland Anti-Kickback Acts shall be required, when and if CITY FUNDS are spent on infrastructure work, as if this infrastructure work were financed in whole or part by loans or grants from the United States.

8.04 HPARC shall promptly pay when due all taxes, license fees, permit fees, debts and obligations incurred by HPARC in connection with infrastructure activities or capital improvement activities, if any, to the extent that such taxes and fees are not waived by applicable governmental entities or agencies. HPARC shall be responsible for its contractors and subcontractors with regard to securing any fees and paying any taxes, debts or obligations incurred by said contractor or subcontractor.

8.05 If infrastructure projects are to be constructed, HPARC shall submit all designs including all drawings, plans, specifications and estimated costs for infrastructure development or capital improvements to be paid from CITY FUNDS before procuring construction of same. CITY'S approval may be withheld if the proposed infrastructure or capital improvement design and construction fail to comply with applicable codes, standards and specifications.

ARTICLE IX. INDEMNIFICATION

9.01 HPARC and CITY acknowledge they 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 the Civil Practice 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. Nothing in this Agreement waives any governmental immunity available to HPARC or City under the laws of the State of Texas.

9.02 HPARC covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 or bodily injury, death and property damage, made upon the CITY arising out of this Agreement, including any acts or omissions of HPARC, any agent, officer, director, representative, employee, consultant or subcontractor of HPARC, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT HPARC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY OR HPARC UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

9.03 The provisions of this INDEMNITY are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. HPARC shall advise the CITY in writing within 48 hours of any claim or demand against the CITY or HPARC known to HPARC arising out of HPARC's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at HPARC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving HPARC of any of its obligations under this paragraph.

9.04 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by HPARC in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. HPARC shall retain City-approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If HPARC fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and HPARC shall be liable for all costs incurred by City. City shall also have the right, at its option, to be

represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

9.05 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of HPARC, any subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for HPARC or any subcontractor under worker's compensation or other employee benefit acts.

ARTICLE X. PUBLIC ACKNOWLEDGEMENT AND POLITICAL ACTIVITIES

10.01 Public acknowledgement of CITY's contribution must be made when funds of CITY are utilized and in all cases when HPARC chooses to acknowledge other entities for contributions. Such acknowledgement may include CITY's recognized seal or other appropriate language. No reference to any individual shall be used.

10.02 No funds provided from or through CITY shall be contributed to or used for, in whole or in part, the conduct of political activities or the benefit of any candidate for elective public office, partisan or non-partisan, nor shall the personnel involved in the administration of any CITY-funded grant or activity be assigned to work for or on behalf of any partisan or non-partisan political activity or candidate. This Section 10.02, including (A)(1 through 4) and (B)(1 through 3), shall be included in any contract or subcontract of HPARC:

A. The following is prohibited:

- 1) Working, or directing other staff to work, on any political activities on paid time.
- 2) The use of facilities or equipment, paid for in whole or in part with CITY funds, for political purposes. This includes space, office equipment and supplies, and telephones during agency time as well as after regular-duty hours.
- 3) The implicit or explicit coercion of staff to work on political activities on their own time.
- 4) The above statements shall not be construed to prohibit any person from exercising his rights as a citizen to express his opinion and to cast his vote.

B. In order to ensure the above, HPARC shall:

- 1) Provide every staff person with a statement of the above prohibition.
- 2) Include on that statement a paragraph that directs any staff person who has knowledge of violations or feels that he or she has been pressured to violate the above policy, to write or call and report the same to the Director of the

Center City Development Office, City of San Antonio, P.O. Box 839966, San Antonio, Texas, 78283; 210-207-8080.

- 3) Have each employee sign the statement and include the same in HPARC's personnel files, as appropriate, with copies to CITY.

ARTICLE XI. CONFLICT OF INTEREST

11.01 HPARC acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

11.02 Pursuant to Section 11.01 above, HPARC warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. HPARC further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

ARTICLE XII. NEPOTISM

12.01 HPARC agrees that it shall not award a contract of any nature, which is to be paid for from this CITY FUNDS, to any person who is related to a member of HPARC'S Board of Directors or staff.

ARTICLE XIII. DEFAULT

13.01 If HPARC fails or refuses to comply, or fails or refuses to require contractor or subcontractor compliance with the material provisions of this Agreement and/or if at any time CITY learns that a contractor or subcontractor is willfully violating or refusing to observe the material conditions, provisions or stipulations of this Agreement, CITY through its City Manager or her designee may, if such noncompliance continues for thirty (30) days after receipt by HPARC of written notice, terminate this Agreement and require reimbursement of all then-unexpended CITY FUNDS. All costs and expenses of finishing applicable projects shall then be the sole responsibility of HPARC.

13.02 If HPARC fails to comply with the material terms of any other contract or agreement to which CITY and HPARC are parties, although unrelated to this Agreement, CITY through its City Manager or her designee may, by written notice, direct HPARC to comply with

the terms of said Agreement. If noncompliance continues beyond thirty (30) days from such notice, the City Manager or designee may, in addition to seeking remedies at law and in equity, require reimbursement of all then-unexpended CITY FUNDS.

13.03 In the event of termination due to material default by HPARC, HPARC shall return to CITY, within sixty (60) calendar days of receiving CITY'S written notice of termination, all then-unexpended funds received from CITY under this Agreement.

ARTICLE XIV. ASSIGNMENT

THIS AGREEMENT IS PERSONAL TO HPARC AND FUNDS RECEIVED AS A RESULT HEREOF SHALL ONLY BE USED BY HPARC FOR THE PURPOSES STATED HEREIN. HPARC SHALL NOT ASSIGN THIS AGREEMENT NOR ANY OR ALL OF THE RIGHTS AND DUTIES HEREUNDER.

ARTICLE XV. GOVERNING LAW AND VENUE

This Agreement shall be performable in Bexar County, Texas and is governed by the laws of the State of Texas. Venue and jurisdiction arising under or in connection with this Agreement shall lie exclusively in Bexar County, Texas.

ARTICLE XVI. LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

ARTICLE XVII. WAIVER

17.01 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.

17.02 Notwithstanding the above, HPARC shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.

17.03 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.

ARTICLE XVIII. RELATIONSHIP OF PARTIES

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 ventures or any other similar such relationship between the Parties hereto. In addition, nothing contained herein shall be deemed to create any rights of third parties as beneficiaries hereto.

ARTICLE XIX. TERMINATION

The obligations of HPARC hereunder shall cease and terminate after audited financial reports document the expenditure of all CITY FUNDS, except that the obligations of HPARC under Article V hereof shall cease and terminate one (1) year after the disbursement of all CITY FUNDS.

ARTICLE XX. NOTICES

Any notice or other communications to be given in connection with this Agreement must be in writing, and may be given by: (a) actual delivery; or (b) certified or registered mail and shall be deemed to have been given and received either: (i) upon actual delivery [if delivered pursuant to subsection (a) above]; or (ii) forty-eight (48) hours after a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, addressed as follows:

If to the HPARC:	Andres Andujar Chief Executive Officer Hemisfair Park Area Redevelopment Corporation 434 South Alamo Street San Antonio, Texas 78205
If to CITY:	Director Center City Development and Operations Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966

Provided, however, that either Party may at any time change the place of receiving notice following ten (10) days written notice of such change of address to the other Party in accordance with the manner of giving notice described above.

ARTICLE XXI. ENTIRE AGREEMENT

This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement.

ARTICLE XXII. AMENDMENTS

No amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.

ARTICLE XXIII. EXECUTION AUTHORITY

The Parties hereto represent and assure that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution, ordinance or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required. The signers of this Agreement represent and assure that they have full legal authority to execute this Agreement and to bind the Party for whom they are signing to all terms, performances and provisions herein contained.

EXECUTED IN DUPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, THIS THE _____ DAY OF _____, 2016.

CITY OF SAN ANTONIO

HPARC

Lori Houston
Assistant City Manager

Andres Andujar
Chief Executive Officer

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

City Attorney