

ORDINANCE

APPROVING A SECOND AMENDMENT TO FUNDING AGREEMENT BETWEEN HEMISFAIR PARK AREA REDEVELOPMENT CORPORATION (“HPARC”) AND THE CITY OF SAN ANTONIO.

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WHEREAS, in 2012, City Council adopted the Hemisfair Master Plan in which the City-created HPARC and City staff worked with the State legislature to realign designated parkland to clearly delineate parkland from non-park areas available; and

WHEREAS, acting under authority of specific legislation for Hemisfair, City Council, in December of 2013 designated 18.47 acres of parkland in Hemisfair. City Council also designated several parcels for intended future development and conveyed those to the Hemisfair Park Public Facilities Corporation (HP PFC), a corporation governed by City Council. City Council also approved a deed restriction in 2013 that limited hotel development in Hemisfair to no more than 200 rooms; and

WHEREAS, consistent with Council’s prior action and the adopted Master Plan, on June 26, 2014, City Council subsequently authorized HPARC to solicit private development proposals. The Master Lease requires the HP PFC to approve development leases involving its property; and

WHEREAS, in March 2015, HPARC issued the solicitation for several parcels at the corner of South Alamo and Market Street. In February 2017, City Council approved a Development Sublease Agreement between HPARC and ZH Downtown Development Company, LLC; and

WHEREAS, HPARC and ZH Downtown Development Company, LLC (“ZH Downtown”) entered into the *Eighth Amendment to Development Sublease Agreement* (the “Eighth Amendment”), which amends the *Development Sublease Agreement by and between Hemisfair Park Area Redevelopment Corporation and ZH Downtown Development Company, LLC* (the “Development Sublease”) dated February 3, 2017 and approved by the City Council on February 2, 2017, through Ordinance 2017-02-02-0001; and

WHEREAS, in connection with the Eighth Amendment, HPARC and ZH Downtown divided the Premises into three separate and distinct parcels of land (to be referred to as Parcel D1/D2, Parcel D3 and Parcel D5) to facilitate development of the Project and for certain other purposes; and

WHEREAS, HPARC and City desire that a mixed use project including a hotel and residential and retail developments be constructed (the “*Development*”) that will be generally located on parcels of land in the Hemisfair Northwest Quadrant Public Private Development site bounded by Market Street and South Alamo Street in San Antonio, Bexar County, Texas, known as parcels D1, D2, D3 and D5 (the “*Development Site*”);

WHEREAS, to facilitate the Development (i) with the agreement and consent of HPARC, ZH Downtown partially assigned the development of parcels D1 and D2 out of the Development Site

to PH Hemisfair, LLC (together with its successors or assigns, the “***D1-D2 Developer***”) and (ii) HPARC entered into an Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D1-D2 Developer for the development of parcels D1-D2 to include residential and retail developments (the “***D1-D2 Development Site***”);

WHEREAS, to further facilitate the Development (i) with the agreement and consent of HPARC, ZH Downtown partially assigned the development of parcel D5 out of the Development Site to Area Real Estate, LLC (together with its successors or assigns, the “***D5 Developer***”) and (ii) HPARC entered into a stand-alone separate and distinct Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D5 Developer for the development of parcel D5 to include residential and retail developments (the “***D5 Development Site***”); and

WHEREAS, ZH Downtown retained the rights to development of parcel D3 and to further facilitate the Development (i) with the agreement and consent of HPARC, ZH Downtown partially assigned the development of parcel D3 out of the Development Site to ZH Downtown’s affiliate Zachry Park Hotel QOZB, LLC (together with its successors or assigns, the “***D3 Developer***”) and (ii) HPARC entered into a stand-alone separate and distinct Amended and Restated Development Sublease Agreement, dated June 29, 2022, with the D3 Developer (the “***D3 Sublease***”) for the development of parcel D3 to include a full service hotel (the “***D3 Development Site***”);

WHEREAS, the City and HPARC previously entered into that certain *Agreement to Use Funds of the City of San Antonio* (the “Funding Agreement”) on June 30, 2016 and approved by City Council in Ordinance No. 2016-06-30-0530, whereby HPARC agreed to fund all required, regularly scheduled debt service on the Infrastructure Debt associated with Civic Park Utility Infrastructure; and

WHEREAS, the construction of the hotel in the Public-Private Partnership Project within 1000 feet of the Henry B. Gonzalez Convention Center, which is a qualified convention center facility as defined by Section 351.151 of the Texas Tax Code, entitles the City of San Antonio to receive certain rebates of state sales and uses tax imposed under Tax Code Chapter 151 and hotel occupancy tax imposed under Tax Code Chapter 156 (collectively, the “State Tax Funds”) under Section 351.156 of the Tax Code; and

WHEREAS, the City designated the hotel component of the Public-Private Partnership Project as the qualified hotel that is part of a qualified project for purposes of Subchapter C of Chapter 351 of the Tax Code and the hotel will be a qualified hotel pursuant to Section 351.151 of the Texas Tax Code; and

WHEREAS, pursuant to Section 351.154 of the Tax Code, the City authorized HPARC to act as agent on behalf of the City to request and receive funds to which the City may be entitled pursuant to Section 351.156 of the Tax Code and dedicate such funds to ZH Downtown Development Company, LLC; and

WHEREAS, the First Amendment to Agreement to Use Funds of the City of San Antonio (the “First Amendment”) was authorized by City of San Antonio Ordinance No. HPPFC 2022-04-07-0001, passed and approved on April 7, 2022; and

WHEREAS, in order to allow payment of the State Tax Funds to ZH Downtown, a Chapter 380 Agreement between HPARC and ZH Downtown Development Company, LLC was entered into; and

WHEREAS, the 88th Legislature amended Section 351.157 of the Texas Tax Code to expand the definition of a “qualified establishment” to include any restaurants, bars, spas, and retail establishments that were located within 1000 feet of a qualified hotel. This revision allows the City to capture as a tax rebate, additional sales and use tax dollars from qualified establishments that are within 1000 feet of the P3 hotel that is being built by ZH Downtown in the NW Quadrant of Hemisfair Park; and

WHEREAS, in an effort to recover these additional tax rebates, City and HPARC propose to enter into the Second Amendment to Agreement to Use Funds of the City of San Antonio (the “Second Amendment”), which is attached hereto as Exhibit “A”; and

WHEREAS, in connection with the Second Amendment to the Funding Agreement, HPARC and ZH Downtown intend to amend and restate the Chapter 380 Agreement between them as it relates to the pledge of the additional tax rebates available under Section 351.157 of the Texas Tax Code; and

WHEREAS, it is now necessary for the City Council to approve the Second Amendment described herein for development of the Public-Private Partnership Project at Hemisfair Civic Park; **NOW THEREFORE:**

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

SECTION 1. City Council approves the Second Amendment to the Funding Agreement by and between the City and HPARC.

SECTION 2. As part of the Second Amendment to the Funding Agreement, the City designates HPARC as the agent of the City for requesting and receiving payments of State Tax Funds pursuant to (i) Section 351.156 of the Texas Tax Code and (ii) for each “qualified establishment” (as that term is described by Section 351.157 of the Texas Tax Code), located on any of (w) the D1-D2 Development Site, (x) the D5 Development Site, or (y) the D3 Development Site. As such, HPARC is authorized to take all necessary actions to inform the State Comptroller to deliver the rebate of State Tax Funds to HPARC.

SECTION 3. The City shall create funds in connection with the tax rebates that will account for the revenue and expenses associated with the collection of the State Hotel Occupancy Tax and State Sales and Use Tax, as set forth herein.

SECTION 4. This Ordinance is effective immediately upon passage by eight affirmative votes; otherwise, it is effective on the tenth day after passage.

TR
1/11/2024
Item No. 23-196020

PASSED AND APPROVED this ____ day of _____ 2024.

M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:

Debbie Racca-Sittre, City Clerk

Andrew Segovia, City Attorney

TR
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EXHIBIT A