

AN ORDINANCE 2008-09-04-0754

DECLARING THE FIRE STATION REPLACEMENT CAPITAL PROJECT TO BE A PUBLIC PROJECT; DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF PRIVATELY OWNED REAL PROPERTY BEING 0.823 ACRES CONSISTING OF LOT 1, BLOCK 2, NCB 10183, PARCEL NO. 18228; AND 3.286 ACRES OUT OF THE NORTH END OF LOT 359, BLOCK 38, NCB 11137, PARCEL NO. 18227 LOCATED IN COUNCIL DISTRICTS 1 AND 4; AUTHORIZING THE CITY ATTORNEY TO ACQUIRE THE PROPERTY INTERESTS THROUGH NEGOTIATION AND/OR CONDEMNATION, IF NECESSARY; AND AUTHORIZING THE APPROPRIATION OF \$1,663,880.00 FOR THE REPLACEMENT OF FIRE STATIONS NO. 19 AND NO. 2 UNDER THE FIRE STATION CAPITAL IMPROVEMENT PROGRAM.

* * * * *

WHEREAS, the public health, safety and best interest of the City and its citizens require the replacement of Fire Station Nos. 19 and 2 as part of the Fire Station Replacement Capital Project; and

WHEREAS, property interests are required for the Fire Station Capital Improvement Program and property acquisitions of two parcels, as well as, other expenses associated with acquiring these parcels; and

WHEREAS, it is necessary to construct the project upon properties that are privately owned; and

WHEREAS, this Ordinance authorizes the acquisition of two parcels located on 1310 Vance Jackson in Council District 1 and 1070 W. Villaret Blvd. in Council District 4 at a fair market value through negotiation or condemnation; and

WHEREAS, this Ordinance authorizes the appropriation of \$1,663,880.00 for the acquisition of fee simple title in two separate parcels of privately owned real property and for other expenses associated with acquiring these properties as authorized under the Fire Station Capital Improvement Program; and

WHEREAS, funds are currently available in the Fire Department's 2006 Issued Certificates of Obligations and 2006 Issued Tax Notes; and

WHEREAS, all appropriations are in accordance with the FY 2008 Adopted Capital Improvement Program Budget; **NOW THEREFORE**,

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

SECTION 1. A public necessity is hereby declared for the City of San Antonio to acquire fee simple title to certain privately owned real properties for the construction, operation, reconstruction, improvement, repair and maintenance of Fire Station Nos. 29 and 2 under the Fire Station Capital Improvement Program. Said parcels of land are generally described as follows:

Parcel No.	Street Address	Legal Description
18227	1070 W. Villaret Blvd	Being 3.285 acres out of the North end of Lot 359, Block 38, New City Block 11137
18228	2307 Vance Jackson	Being 0.823 acres consisting of Lot 1, Block 2, New City Block 10183

SECTION 2. The City Manager, or her designee, is hereby authorized to direct through the City Attorney to institute and prosecute to conclusion all necessary proceedings to condemn such property as the City of San Antonio is unable to acquire through negotiation by reason of its inability to agree with the owners thereof as to the value of such property, or for any other reason, and to take any other legal action deemed necessary by the City Attorney to accomplish these purposes.

SECTION 3. The prior actions and efforts of City officials to negotiate the purchase of the necessary rights and the steps taken to initiate and prosecute condemnation of the property are hereby ratified and affirmed.

SECTION 4. The following financial adjustments are hereby approved:

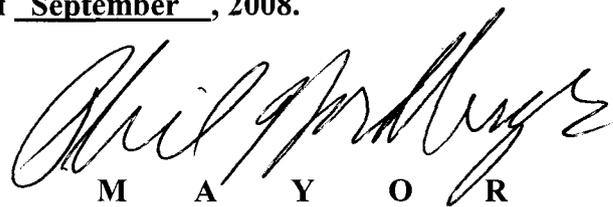
- a) The amount of \$453,880.00 is appropriated in SAP Fund 43902001, 2006 Certificates of Obligation-Fire, SAP WBS CO-20061-01-01-06, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 20-00115-90-03. The amount of \$453,880.00 is authorized to be transferred to SAP Fund 43099000, Certificates of Obligation-Capital Projects.
- b) The budget in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, shall be revised by increasing SAP WBS element 20-00115-90-03 entitled Transfer From CO-20061-01-01-06, SAP GL account 6101100 – Interfund Transfer In, by the amount \$453,880.00.
- c) The amount of \$1,210,000.00 is appropriated in SAP Fund 43904001, 2006 Tax Notes-Fire, SAP WBS CO-20613-01-01-02, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 20-00115-90-04. The amount of \$1,210,000.00 is authorized to be transferred to SAP Fund 43099000, Certificates of Obligation-Capital Projects.
- d) The budget in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, shall be revised by increasing SAP WBS element 20-00115-90-04 entitled Transfer From CO-20613-01-01-02, SAP GL account 6101100 – Interfund Transfer In, by the amount \$1,210,000.00.

- e) The amount of \$50,000.00 is appropriated in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, SAP WBS Element 20-00115-03-02-01-01, entitled Land Acquisition - Title FS # 19, SAP GL Account 5209010.
- f) The amount of \$30,000.00 is appropriated in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, SAP WBS Element 20-00115-03-02-01-02, entitled Land Acquisition - Title FS # 2, SAP GL Account 5209010.
- g) The amount of \$931,500.00 is appropriated in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, SAP WBS Element 20-00115-03-02-04-01, entitled Land Acquisition - Acquisition FS # 19, SAP GL Account 5209010.
- h) The amount of \$652,380.00 is appropriated in SAP Fund 43099000, Certificates of Obligation-Capital Projects, SAP Project Definition 20-00115, Fire Station Replacement, SAP WBS Element 20-00115-03-02-04-02, entitled Land Acquisition - Acquisition FS # 2, SAP GL Account 5209010.

SECTION 5. 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 6. This Ordinance shall be effective on the tenth day after passage hereof.

PASSED AND APPROVED this the 4th day of September, 2008.



M A Y O R

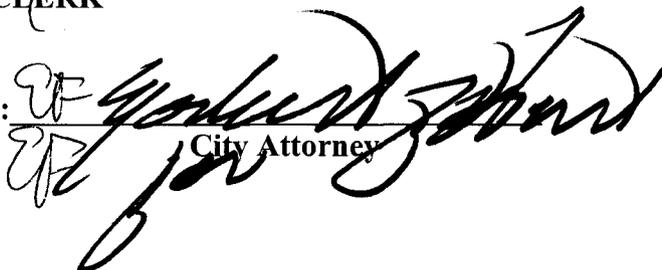
PHIL HARDBERGER

ATTEST:



CITY CLERK

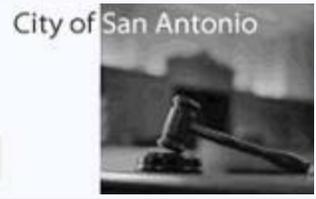
APPROVED AS TO FORM:



City Attorney



Request for
**COUNCIL
ACTION**

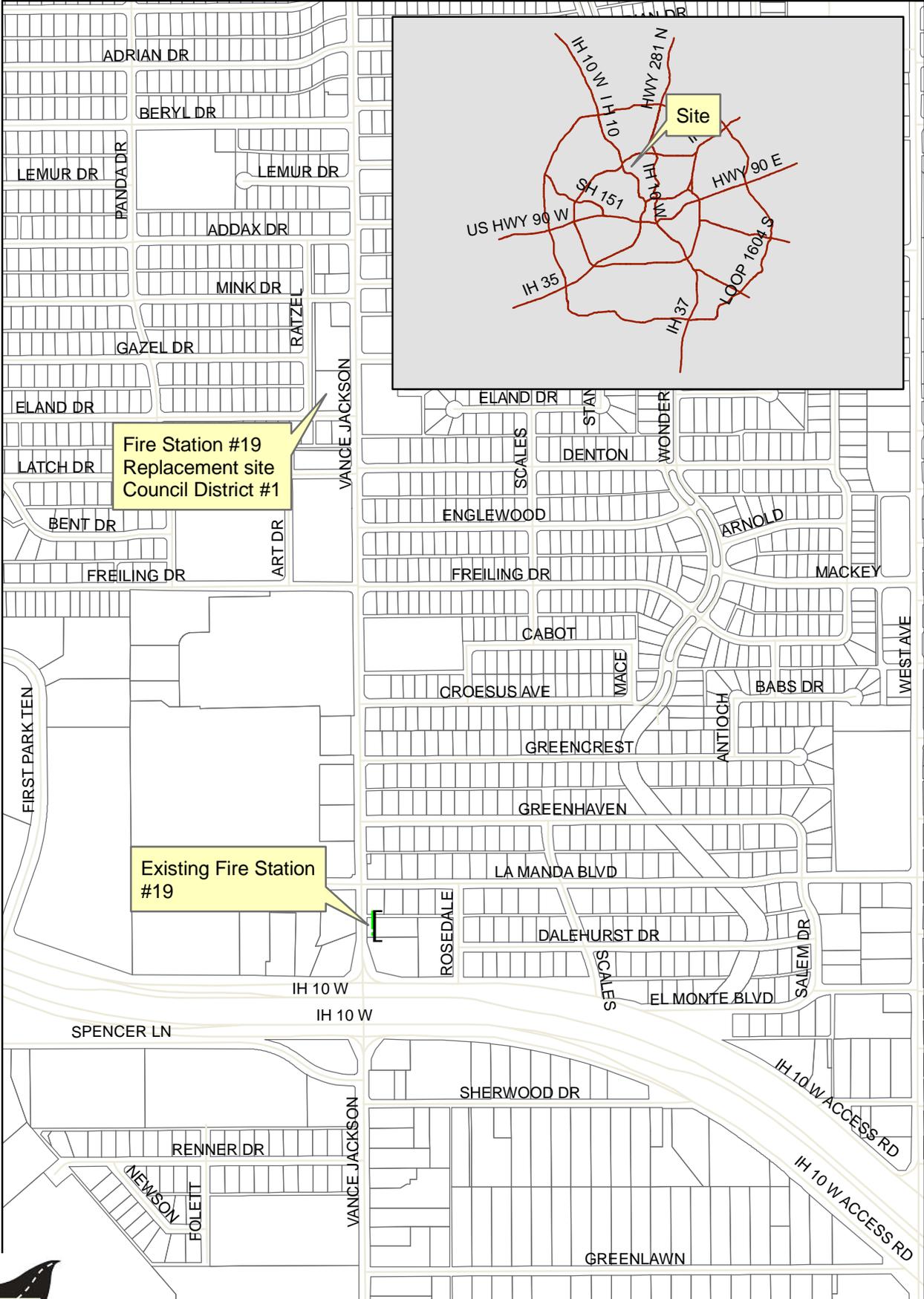


Agenda Voting Results - 17

Name:	17
Date:	09/04/2008
Time:	10:38:38 AM
Vote Type:	Motion to Approve
Description:	An Ordinance declaring the Fire Station Replacement Capital Project to be a public project; declaring a public necessity for the acquisition of privately owned real property being 0.823 acres consisting of Lot 1, Block 2, NCB 10183, Parcel No. 18228; and 3.286 acres out of the North end of Lot 359, Block 38, NCB 11137, Parcel No. 18227 located in Council Districts 1 and 4; authorizing the City Attorney to acquire the property interests through negotiation and/or condemnation, if necessary; and authorizing the appropriation of \$1,663,880.00 for the replacement of Fire Stations No. 19 and No. 2 under the Fire Station Capital Improvement Program. [Penny Postoak Ferguson, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

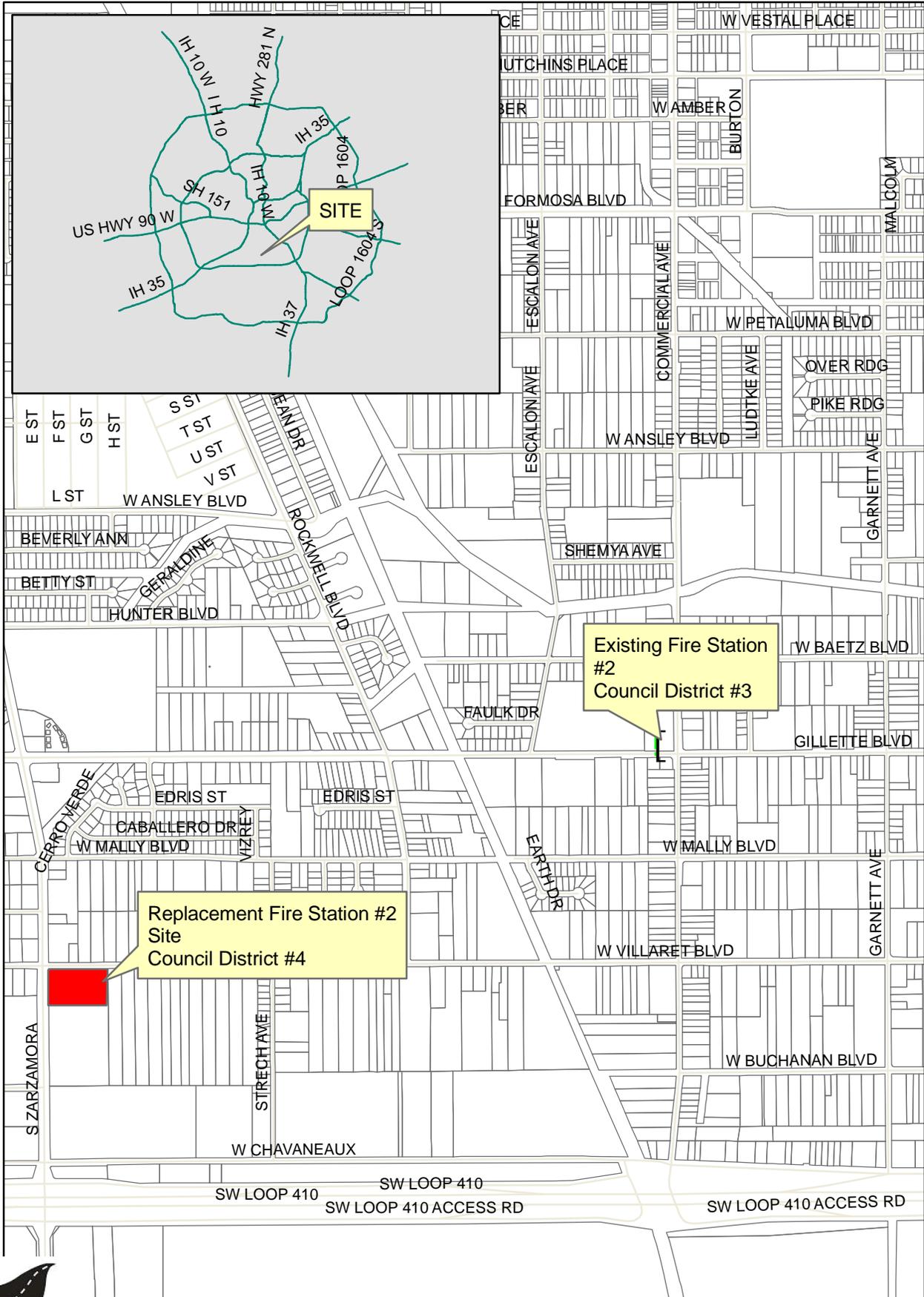
FIRE STATION #19



Replacement site is .513 miles from existing Fire Station



FIRE STATION #2



Existing Fire Station #2
Council District #3

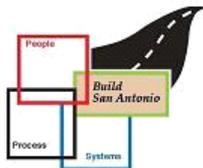
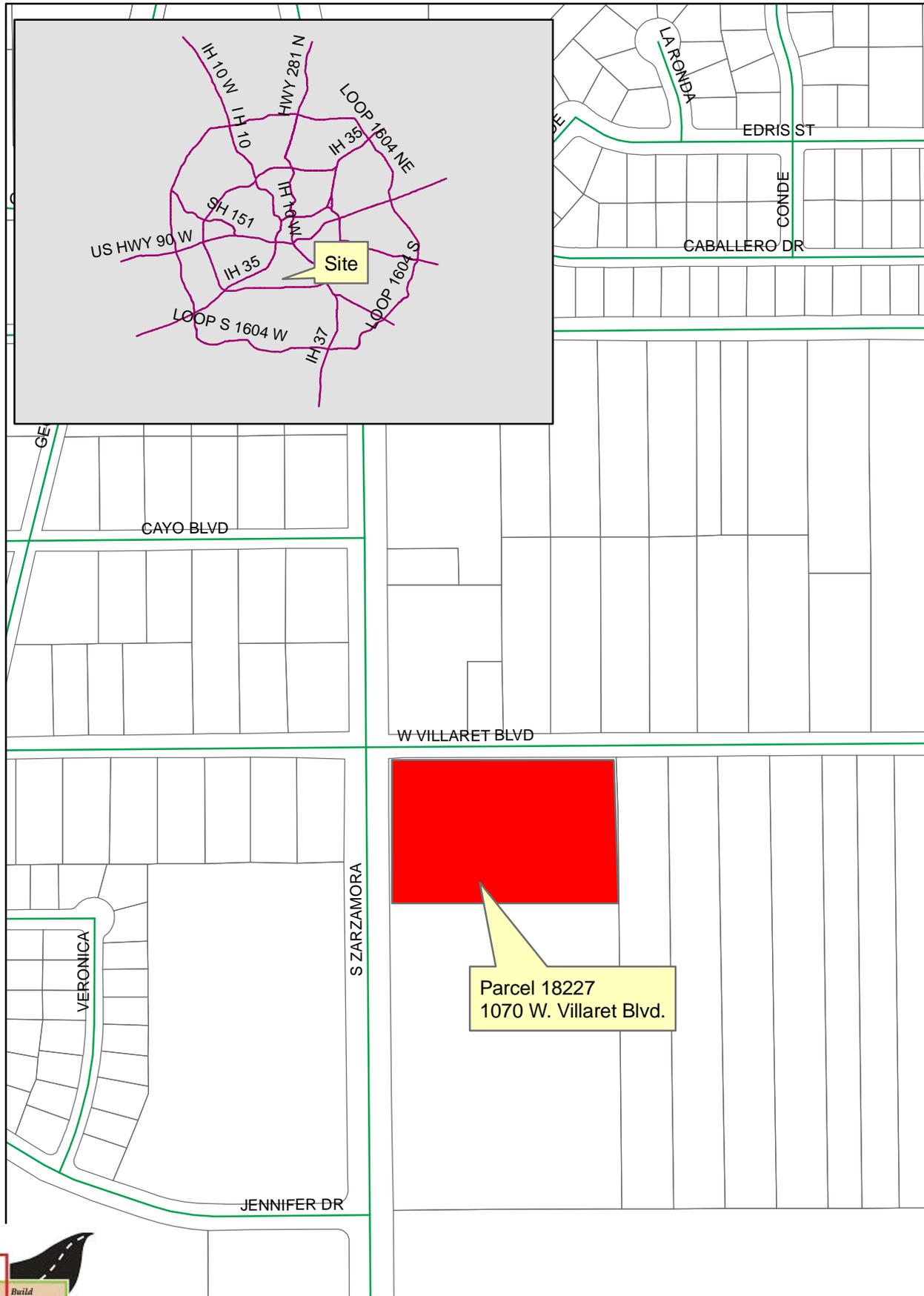
Replacement Fire Station #2 Site
Council District #4

Replacement site is .988 miles from existing Fire Station



FIRE STATION #2 PROJECT

Council District #4

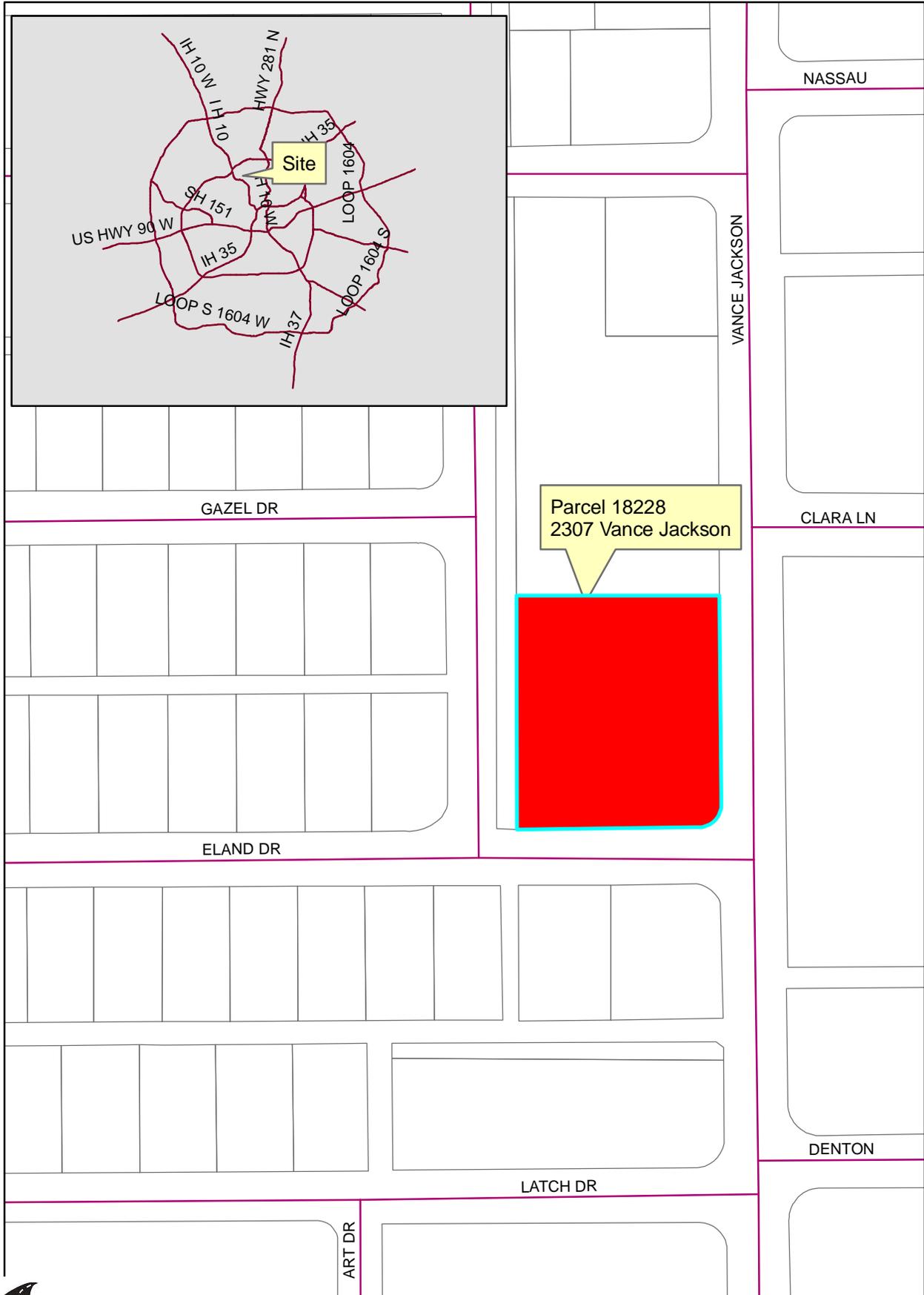


Capital Improvements
Management Services



FIRE STATION #19 PROJECT

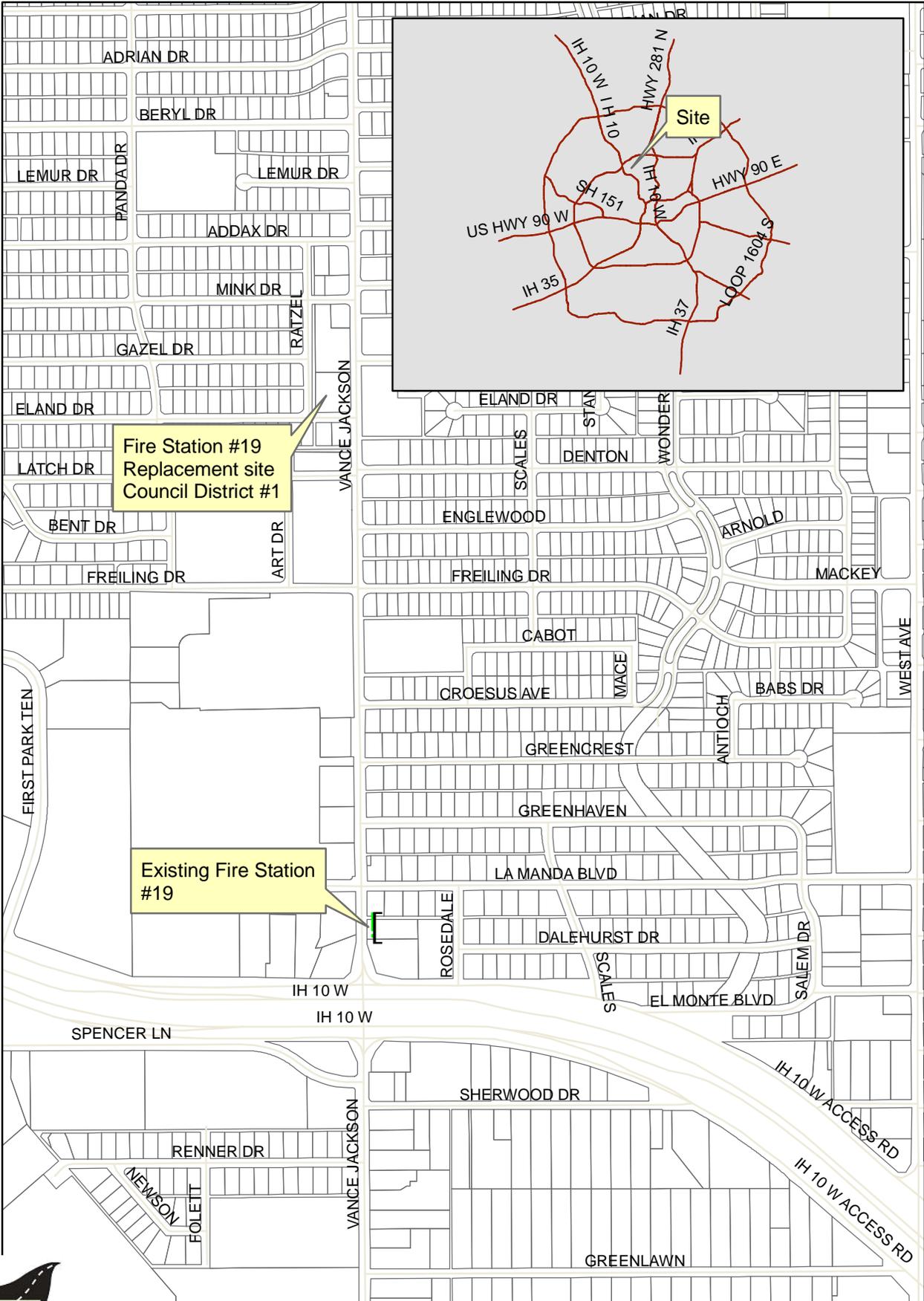
Council District #1



The land identified for acquisition for the proposed acquisition of 2 (two) separate properties for Fire Station Capital Improvement Program are listed in the table below:

Council District	Fire Station	Street Address	Parcel #s	Legal
1	19	2307 Vance Jackson	18228	Being 0.823 acres consisting of Lot 1, Blk 2, NCB 10183
4	2	1070 West Villaret Blvd.	18227	Being 3.286 acres out of the North end of Lot 359, Blk. 38, NCB 11137

FIRE STATION #19



Replacement site is .513 miles from existing Fire Station

Real Estate Sales Contract
(Gabriel Mendez, Inc./1070 W. Villaret Blvd.)

Table of Contents

1. Deadlines and Other Dates.....	3
2. Closing Documents.....	3
3. Exhibits.....	4
4. Purchase and Sale of Property.....	4
5. Interest on Earnest Money.....	4
6. Title and Survey.....	4
7. Inspection Period.....	5
8. Independent Consideration.....	6
9. Representations.....	6
10. Condition until Closing; Cooperation.....	6
11. Termination.....	7
12. Allocation of Closing Costs.....	7
13. Closing.....	8
14. Default and Remedies.....	9
15. Miscellaneous Provisions.....	10
16. Prohibited Interest in Contracts.....	12
17. Public Information.....	13
Title Company Acceptance of Escrow and Receipt for Contract.....	14
Title Company Receipt for Earnest Money.....	15
Exhibit A.....	16
Exhibit B.....	17
Exhibit C.....	18
Exhibit D.....	19

**Authorizing
Ordinance:**

Seller: Gabriel Mendez, Inc. d/b/a/ Mendez Construction

Address: 1030 Old Highway 90 West, San Antonio, Texas
78237

Phone: 432-2188

**Type of
Entity:** Texas corporation

Seller's Broker: Grace Olivarez, Century 21—United Northside

Address: 10924 Vance Jackson, Suite 100, San Antonio, Texas
78202

Phone: 979-6700

Email: grace.olivarez@c21unitedgroup.com

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Kevin Sadler, CIMS)

Phone: 207-4039

Email: kevin.sadler@sanantonio.gov

Type of Entity: Texas municipal corporation

Buyer's Counsel: Kenneth L. Bennight, Jr.

Address: City Attorney's Office, P.O. Box 839966, San Antonio,
Texas 78283-3966

Phone: 207-6168

Email: kenneth.bennight@sanantonio.gov

Property: A 300 feet times 478.03 feet parcel out of the north part of a 10.665 acres tract, out of Lot 359, Block 38, Mayfield Park Subdivision, according to the plat recorded in Volume 980, Page 94, Deed and Plat Records of Bexar County, Texas, and more fully described in Exhibit A.

Title Company: LandAmerica Lawyers Title

Address: 2511 North Loop 1604 West, Suite 101, San Antonio,
Texas 78258 (Attn: Jack Hoffman)

Phone: 223-2911

Independent Consideration: \$100

Purchase Price: \$652,380

Earnest Money: \$5,000

Buyer's Liquidated Damages: \$5,000

Effective Date: The date the Title Company acknowledges a fully executed copy of this Agreement.

Survey Category: Category 1A Texas Land Title Survey

County for Performance Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1.01	Earnest Money Deadline	Five working days after Effective Date
1.02	Delivery of Title Commitment	30 Days after the Effective Date
1.03	Delivery of Survey	40 Days after Effective Date
1.04	Title and Survey Objection Deadline	20 Days after the receipt of Title Commitment and Survey
1.05	End of Inspection Period	70 Days after the Effective Date
1.06	Closing Date	20 days after the Inspection Period
1.07	Closing Time	10:00 A.M.

The deadlines may be altered by the mutual agreement of the parties. Buyer's consent may be made by the Director of Capital Improvements Management Services without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

General Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit C**

2.02. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Purchase Price

2.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit D**.

2.04. The deed may except from warranty items items reflected in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations

Exhibit C—Notices, Statements, and Certificates

Exhibit D—Form of Deed

4. Purchase and Sale of Property.

Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property.

5. Interest on Earnest Money.

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

6. Title and Survey.

6.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract.

6.03. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.05. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment and the Survey by the deadline stated in section 1.

6.06. *Title Objections.* Buyer has until the Title and Survey Objection Deadline to review the Survey and Title Commitment and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title and Survey Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that this contract is terminated. In absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

7. Inspection Period.

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer may not unreasonably interfere with existing operations or occupants of the Property; and

- b. if the Property is altered because of Buyer's inspections and Buyer does not purchase the Property, Buyer must return the Property to its preinspection condition promptly after terminating the contract.

7.02. *Extension.* Buyer may extend the Inspection Period for an additional 60 days if it determines in its discretion that it needs to perform a Phase II environmental site assessment.

7.03. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period.

8. Independent Consideration.

As independent consideration for the option contained in this agreement, Seller acknowledges receipt from Buyer of the Independent Consideration. This sum is not a credit against the Purchase Price and is not refundable under any circumstance.

9. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

10. Condition until Closing; Cooperation.

10.01. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10.02. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

10.03. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

11. Termination.

11.01. If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer. Seller retains the Independent Consideration.

11.02. If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller. Seller retains the Independent Consideration.

12. Allocation of Closing Costs.

12.01. Seller will pay:

- a. the half basic charge for the Title Policy;
- b. one-half of the escrow fee charged by Title Company;
- c. the costs to prepare the deed;
- d. the costs to obtain, deliver, and record releases of all liens to be released at closing;
- e. the costs to record all documents to cure Title Objections agreed to be cured by Seller;
- f. Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
- g. half the additional premium for the "survey/area and boundary deletion" in the Title Policy
- h. the costs to obtain certificates or reports of ad valorem taxes;
- i. the costs to deliver copies of the instruments described in article 1; and
- j. Seller's expenses and attorney's fees.

12.02. Buyer will pay:

- a. one-half of the escrow fee charged by Title Company;

- b. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;
- c. the half basic charge for the Title Policy;
- d. half the additional premium for the "survey/area and boundary deletion" in the Title Policy
- e. the cost to obtain the Survey;
- f. the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; and
- g. Buyer's expenses and attorney's fees.

12.03. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is Buyer liable for any roll back taxes.

12.04. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.

12.05. *Prepaid Rent.* Buyer gets a credit a closing for all rent previously paid to Seller allocable to the period after closing.

12.06. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.

12.07. *Brokers' Commissions.* Seller must pay the Commission to Broker. Each party represents to the other that no other commissions are due in respect of this transaction.

13. Closing.

13.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.

- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Delivery of Originals.* Seller will deliver to Buyer the originals of Seller's Records.
- e. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller, if the sale is seller-financed.
- f. Buyer need not close if Seller cannot or does not deliver marketable title at closing. If Buyer does not close for want of marketable title, the earnest money is returned to Buyer.
- g. Buyer will receive at closing the basic title policy plus endorsements removing the survey exception and the exception for rights of parties in possession.

13.02. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

14. Default and Remedies.

14.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer. Seller must also pay to Buyer as liquidated damages the Buyer's Liquidated Damages. Seller retains the Independent Consideration.

b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

14.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may, as its sole and exclusive remedy, terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

14.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by either party's default cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and Buyer's Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

15. Miscellaneous Provisions.

15.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, state of Texas. **The Construction Of This Agreement And The Rights, Remedies, And Obligations Arising Thereunder Shall Be Governed By The Laws Of The State Of Texas.** Provided, however, the Texas conflicts of law rules shall not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

15.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

15.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

15.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

15.05. *Modification.* This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

15.06 *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

15.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble hereof. If the addressee is a corporation, notices must be addressed to the attention of its President. The giving of notice is complete three days after its deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to conform to the requirement that mailings be done by certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

15.08. *Pronouns.* In construing this Agreement, plural constructions include the singular, and singular constructions include the plural. No significance attaches to whether a pronoun is masculine, feminine, or neuter. The words "herein," "hereof," and other, similar compounds of the word "here" refer to this entire Agreement, not to any particular provision of it.

15.09. *Captions.* Paragraph captions in this Agreement are for ease of reference only and do not affect the interpretation hereof.

15.10. *Mediation.* As a condition precedent to bringing any action to enforce or interpret this agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a mediator qualified under § 154.052, Texas Civil Practice and Remedies Code. Suit may be filed only after the sooner to occur of (i) a full day of mediation by a mediator qualified as provided above or (ii) certification by the mediator that further attempts to mediate would be fruitless. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

15.11. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

15.12. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

15.13. *Assignment.* Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer possesses, directly or indirectly, the power to direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise, and any other assignment is void. This contract binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

15.14. *Survival.* The obligations of this contract that cannot be performed before termination of this contract or before closing will survive termination of this contract or closing, and the legal doctrine of merger will not apply to these matters. If there is any conflict between the Closing Documents and this contract, the Closing Documents will control.

15.15. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15.16. *No Special Relationship.* The parties' relationship is an ordinary commercial relationship, and they do not intend to create the relationship of principal and agent, partnership, joint venture, or any other special relationship.

16. Prohibited Interest in Contracts.

16.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

16.02. Seller warrants and certifies as follows:

- (i) Seller and its officers, employees and agents are neither officers nor employees of the City.

(ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

16.03. Seller acknowledges that City's reliance on the above warranties and certifications is reasonable.

17. Public Information.

Seller acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio,
a Texas municipal corporation

**Gabriel Mendez, Inc. d/b/a Mendez
Construction,** a Texas corporation

By: _____

By: Gabriel Mendez

Printed
Name: _____

Printed
Name: Gabriel Mendez

Title: _____

Title: owner

Date: _____

Date: 6-20-08

Attest:

City Clerk

Approved As To Form:

[Signature]

City Attorney

Title Company Acceptance of Escrow and Receipt for Contract

Seller: Gabriel Mendez, Inc. d/b/a/ Mendez Construction

Address: 1030 Old Highway 90 West, San Antonio, Texas
78237

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property: A 300 feet times 478.03 feet parcel out of the north part of a 10.665 acres tract, out of Lot 359, Block 38, Mayfield Park Subdivision, according to the plat recorded in Volume 980, Page 94, Deed and Plat Records of Bexar County, Texas

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

LandAmerica Lawyers Title

By: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Receipt for Earnest Money

Seller: Gabriel Mendez, Inc. d/b/a/ Mendez Construction

Address: 1030 Old Highway 90 West, San Antonio, Texas 78237

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property: A 300 feet times 478.03 feet parcel out of the north part of a 10.665 acres tract, out of Lot 359, Block 38, Mayfield Park Subdivision, according to the plat recorded in Volume 980, Page 94, Deed and Plat Records of Bexar County, Texas

Title Company acknowledges receipt from Buyer of earnest money in the amount set forth below:

Amount: _____

LandAmerica Lawyers Title

By: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit A

METES AND BOUNDS DESCRIPTION

July 2, 2008

BEING a 3.286 acre tract of land out of the North end of Lot 359, Block 38, New City Block 11137, in the City of San Antonio, Bexar County, Texas, Mayfield Park Subdivision recorded in Volume 980, Page 94, Deed and Plat Records, Bexar County, Texas, said 3.286 acre tract being more particularly described as follows:

BEGINNING at a ½" iron rod found in the South Right-of-Way line of W. Villaret Blvd. for the northeast corner of said lot 359 and the northeast corner of the herein described tract;

THENCE South 00°12'09" East 300.00 feet along the west line of said lot 359 to a ½" iron rod set for the southeast corner of the herein described tract;

THENCE South 90°00'00" West 476.39 feet across said lot 359 to a ½" iron rod set in the west R.O.W. line of S. Zarzamora St. for the southwest corner of the herein described tract;

THENCE North 00°31'11" West 300.00 feet along the west R.O.W. line of said S. Zarzamora St. and the south R.O.W. line of said W. Villaret Blvd. for the northwest corner of the herein described tract;

THENCE North 90°00'00" East 478.05 feet along the south R.O.W. line of said W. Villaret Blvd. to the POINT OF BEGINNING.

Stephen G. Cook
Registered Professional Land Surveyor
No. 5293

SGCE No. 597-003-034

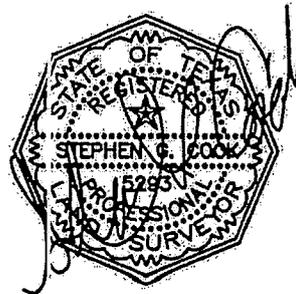


Exhibit B

Representations; Environmental Matters

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

8. *Prepaid Rent.* As of closing, Seller has received no prepaid rent except as reflected on the closing statement as a credit to Buyer.

Exhibit C

Notices, Statements, and Certificates

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit D

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

**WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)**

Grantor:

**Grantor's Mailing
Address (including county):**

Grantee: City of San Antonio

**Grantee's Mailing
Address (including county):** P.O. Box 839966, San Antonio, Texas 78283-3966
(Attention: Director, Asset Management) (Bexar
County)

Consideration:

Property:

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, and conveys the Property to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold to Grantee, and Grantee's heirs and assigns forever.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereto.

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

Grantor warrants that the Property is his sole and separate property.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

Date: _____

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged before me by ????????????????

Date: _____

Notary Public, State of Texas

My commission expires: _____

Authorizing Ordinance: ??????????

Approved as to Form:

City Attorney

After recording, please return to:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvements Management Services)

Real Estate Sales Contract
(Kee Neighborhood Properties and Investments, Inc.)

Table of Contents

1. Deadlines and Other Dates.....	3
2. Closing Documents.....	3
3. Exhibits.....	4
4. Purchase and Sale of Property.....	4
5. Interest on Earnest Money.....	4
6. Title and Survey.....	4
7. Inspection Period.....	5
8. Independent Consideration.....	6
9. Representations.....	6
10. Condition until Closing; Cooperation.....	6
11. Termination.....	7
12. Closing.....	7
13. Default and Remedies.....	9
14. Miscellaneous Provisions.....	10
15. Prohibited Interest in Contracts.....	11
16. Public Information.....	12
Title Company Acknowledgment and Receipt.....	14
Title Company Receipt for Earnest Money.....	15
Exhibit A.....	16
Exhibit B.....	17
Exhibit C.....	18
Exhibit D.....	21

**Authorizing
Ordinance:**

Seller: Kee Neighborhood Properties and Investments, Inc.

Address: 15059 Churchill Estates Boulevard, San Antonio,
Texas 78248-0913

Phone: 341-7700

**Type of
Entity:** Texas corporation

Buyer: City of San Antonio

Address: P.O. Box 830066, San Antonio, Texas 78283-3966
(Attention: Kevin Sadler, CIMS)

Phone: 207-4039

Email: kevin.sadler@sanantonio.gov

Type of Entity: Texas municipal corporation

Buyer's Counsel: Kenneth L. Bennight, Jr.

Address: City Attorney's Office, P.O. Box 830066, San Antonio, Texas 78283-3966

Phone: 207-6168

Email: kenneth.bennight@sanantonio.gov

Property: Lot 1, Block 2, NCB 10183, Dell-View Subdivision, Unit I, City of San Antonio, Bexar County, Texas, according to plat recorded in Volume 3377, Page 93, Deed and Plat Records, Bexar County, Texas

Title Company: LandAmerica Lawyers' Title

Address: 2511 N. Loop 1604 West, Suite 101, San Antonio, Texas 78258

Phone: 223-2911

Fax: 223-2915

Email:

Independent Consideration: \$100

Purchase Price: \$931,500

Earnest Money: \$10,000

Buyer's Liquidated Damages: \$10,000

Effective Date: The date the Title Company acknowledges a fully executed copy of this Agreement.

Survey Category: Category 1A Texas Land Title Survey, Condition II

County for Performance: Bexar County, Texas

1. Deadlines and Other Dates.

All deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. A national holiday is a holiday designated by the federal government. Time is of the essence.

1.01. Earnest Money Deadline	Five working days after Effective Date
1.02. Delivery of Title Commitment	30 Days after the Effective Date
1.03. Delivery of Survey	40 Days after Effective Date
1.04. Title and Survey Objection Deadline	20 Days after the receipt of Title Commitment and Survey
1.05. Asbestos Survey Deadline	40 Days after Effective Date
1.06. End of Inspection Period	70 Days after the Effective Date
1.07. Closing Date	20 days after the Inspection Period
1.08. Closing Time	10:00 A.M.

The deadlines may be altered by the mutual agreement of the parties. Buyer's consent may be made by the Director of Capital Improvements Management Services without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

General Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit B**

2.02. At closing, Buyer will deliver the following items:

Evidence of Buyer's authority to consummate this transaction

Purchase Price

A lease of the Property in favor of Seller in the form of **Exhibit D**

2.03. The documents listed above are collectively known as the "Closing Documents." Unless otherwise agreed by the parties before closing, the deed will be substantially in the form attached as **Exhibit C**.

2.04. The deed may except from warranty items items reflected in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Representations

Exhibit B—Notices, Statements, and Certificates

Exhibit C—Form of Deed

Exhibit D—Form of Lease

4. Purchase and Sale of Property.

Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property.

5. Interest on Earnest Money.

Buyer may direct Title Company to invest the Earnest Money in an interest-bearing account in a federally insured financial institution by giving notice to Title Company and satisfying Title Company's requirements for investing the Earnest Money in an interest-bearing account. Any interest earned on the Earnest Money will be paid to the party that becomes entitled to the Earnest Money. Accrued interest is a credit against the purchase price at closing.

6. Title and Survey.

6.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

6.02. *Title Commitment; Title Policy.* "Title Commitment" means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract.

6.03. *Survey.* "Survey" means an on-the-ground, staked plat of survey and metes-and-bounds description of the Land, prepared by Surveyor or another surveyor satisfactory to Title Company, dated after the Effective Date, and certified to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category.

6.05. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment and the Survey by the deadline stated in section 1.

6.06. *Title Objections.* Buyer has until the Title and Survey Objection Deadline to review the Survey and Title Commitment and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Title Objection by the Title and Survey Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that this contract is terminated. In absence of such timely notice, Buyer will proceed to close, subject to Seller's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

6.07. *Asbestos Survey.* Seller must deliver to Buyer an asbestos survey of the Property not later than Asbestos Survey Deadline, in accordance with the provisions of § 6-293 of the City Code of the City of San Antonio, Texas.

7. Inspection Period.

7.01. *Entry onto the Property.* Buyer may enter the Property before closing to inspect it, subject to the following:

- a. Buyer may not unreasonably interfere with existing operations or occupants of the Property;

- b. if the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs; and
- c. Buyer must deliver to Seller copies of all inspection reports that Buyer prepares or receives from third-party consultants or contractors within three days of their preparation or receipt.

7.02. Buyer may extend the Inspection Period for an additional 60 days if it determines in its discretion that it needs to perform a Phase II environmental site assessment.

7.03. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period.

8. Independent Consideration.

As independent consideration for the option contained in this agreement, Seller acknowledges receipt from Buyer of the Independent Consideration. This sum is not a credit against the Purchase Price and is not refundable under any circumstance.

9. Representations.

The parties' representations stated in **Exhibit A** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

10. Condition until Closing; Cooperation.

10.01. *Condemnation.* Seller will notify Buyer promptly after Seller receives notice that any part of the Property has been or is threatened to be condemned or otherwise taken by a governmental or quasi-governmental authority. Buyer may terminate this contract if the condemnation would materially affect Buyer's intended use of the Property by giving notice to Seller within fifteen days after receipt of Seller's notice to Buyer (or before closing if Seller's notice is received less than fifteen days before closing). If Buyer does not terminate this contract, (a) Buyer and Seller will each have the right to appear and defend their respective interests in the Property in the condemnation proceedings, (b) any award in condemnation will be assigned to Buyer, and (c) if the taking occurs before closing, the description of the Property will be revised to delete the portion taken.

10.02. *Claims; Hearings.* Seller will notify Buyer promptly of any claim or administrative hearing that is threatened, filed, or initiated before closing that affects the Property.

10.03. *Cooperation.* Seller will cooperate with Buyer (a) before and after closing, to transfer the applications, permits, and licenses held by Seller and used in the operation of the Property and to obtain any consents necessary for Buyer to operate the Property after closing and (b) before closing, with any reasonable evaluation, inspection, audit, or study of the Property prepared by, for, or at the request of Buyer.

11. Termination.

11.01. If Buyer terminates this contract in accordance with any of Buyer's rights to terminate, Seller will, within five days of receipt of Buyer's termination notice, authorize Title Company to deliver the Earnest Money to Buyer. Seller retains the Independent Consideration.

11.02. If Seller terminates this contract in accordance with any of Seller's rights to terminate, Buyer will, within five days of receipt of Seller's termination notice, authorize Title Company to pay and deliver the Earnest Money to Seller. Seller retains the Independent Consideration.

12. Closing.

12.01. *Closing.* This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company in funds acceptable to Title Company. The Earnest Money will be applied to the Purchase Price.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* Seller will deliver possession of the Property to Buyer, subject to the Permitted Exceptions existing at closing and any lien and security interest in favor of Seller, if the sale is seller-financed.
- e. Buyer need not close if Seller cannot or does not deliver marketable title at closing. If Buyer does not close for want of marketable title, the earnest money is returned to Buyer.

12.02. *Transaction Costs*

- a. *Seller's Costs.* Seller will pay Seller's attorney's fees.
- b. *Buyer's Costs.* Buyer will pay:
 - (i) the escrow fee;
 - (ii) the basic charge for the Title Policy;
 - (iii) the costs to prepare the deed; the costs to obtain, deliver, and record releases of all liens to be released at closing;
 - (iv) the costs to record all documents to cure Title Objections agreed to be cured by Seller;
 - (v) Title Company's inspection fee to delete from the Title Policy the customary exception for parties in possession;
 - (vi) the additional premium for removing the survey and encroachment exception,
 - (vii) the costs to obtain the Survey, certificates or reports of ad valorem taxes; and
 - (viii) the costs to obtain, deliver, and record all documents;
 - (ix) the costs of work required by Buyer to have the survey reflect matters other than those required under this contract; and
 - (x) Buyer's expenses and attorney's fees.
- c. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date in accordance with § 26.11 of the Texas Tax Code. Seller's portion of the prorated taxes will be paid to Buyer at closing as an adjustment to the Purchase Price. Seller will promptly notify Buyer of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing. If the Property has been the subject of special valuation and reduced tax assessments pursuant to the provisions of chapter 23, subchapter D, of the Texas Tax Code with respect to any period before the closing and additional taxes are assessed pursuant to section 23.55 thereof, the following will apply: In no event will Buyer pay any roll-back taxes.

- d. *Income and Expenses.* Income and expenses pertaining to operation of the Property will be prorated as of the Closing Date on an accrual basis and paid at closing as a credit or debit adjustment to the Purchase Price. Invoices that are received after closing for operating expenses incurred on or before the Closing Date and not adjusted at closing will be prorated between the parties as of the Closing Date, and Seller will pay its share within ten days of notice of Buyer's invoice.
- e. *Postclosing Adjustments.* If errors in the prorations made at closing are identified within ninety days after closing, Seller and Buyer will make postclosing adjustments to correct the errors within fifteen days of receipt of notice of the errors.
- f. *Brokers' Commissions.* Seller must pay the commission owing to any broker hired by Seller.
- g. Buyer will receive at closing the basic title policy plus endorsements removing the survey exception and the exception for rights of parties in possession.

12.03. *Issuance of Title Policy.* Seller will cause Title Company to issue the Title Policy to Buyer as soon as practicable after closing.

13. Default and Remedies.

13.01. *Seller's Default.* If Seller fails to perform any of its obligations under this contract or if any of Seller's representations is not true and correct as of the Effective Date or on the Closing Date ("Seller's Default"), Buyer may elect either of the following as its sole and exclusive remedy:

- a. *Termination; Liquidated Damages.* Buyer may terminate this contract by giving notice to Seller on or before the Closing Date and Closing Time and have the Earnest Money returned to Buyer. Seller must also pay to Buyer as liquidated damages the Buyer's Liquidated Damages.
- b. *Specific Performance.* Buyer may enforce specific performance of Seller's obligations under this contract. If title to the Property is awarded to Buyer, the conveyance will be subject to the matters stated in the Title Commitment.

13.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may, as its sole and exclusive remedy, terminate this contract by giving notice to Buyer on or before the Closing Date and Closing Time and have the Earnest Money paid to Seller.

13.03. *Liquidated Damages.* The parties agree that just compensation for the harm that would be caused by either party's default cannot be accurately estimated or would be very difficult to accurately estimate and that the Earnest Money and Buyer's Liquidated Damages are reasonable forecasts of just compensation to the nondefaulting party for the harm that would be caused by a default.

14. Miscellaneous Provisions.

14.01. *Applicable Law. The Construction of This Agreement and The Rights, Remedies, and Obligations Arising Under it Are Governed By The Laws of The State of Texas.* The Texas conflicts of law rules must not be used to cause the application of the laws of a jurisdiction other than Texas. The obligations performable by both parties are performable in San Antonio, Bexar County, Texas.

14.02. *Severability.* If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

14.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

14.04. *Integration.* **This written agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no oral agreements between the parties.**

14.05. *Modification.* This Agreement may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to the foregoing, any of the terms of this Agreement may be modified at any time by the party entitled to the benefit thereof, but no such modification, express or implied, affects the right of the modifying party to require observance of either (i) the same term or condition as it applies on a subsequent or previous occasion or (ii) any other term hereof.

14.06. *Third Party Beneficiaries.* This Agreement is intended for the benefit of the parties hereto and their successors and permitted assigns only. There are no third party beneficiaries hereof.

14.07. *Notices.* Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

14.10. *Mediation.* As a condition precedent to bringing any action to enforce or interpret this agreement or any aspect thereof, including an action for declaratory relief, the disputants must first submit in good faith to mediation by a mediator qualified under § 154.052, Texas Civil Practice and Remedies Code. Suit may be filed only after the sooner to occur of (i) a full day of mediation by a mediator qualified as provided above or (ii) certification by the mediator that further attempts to mediate would be fruitless. Laches, waiver, and estoppel based upon any reasonable delay relating to attempts to mediate as herein provided may not be asserted by either party hereto.

14.11. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this agreement, it is not necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

14.12. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be required to effect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

14.14. *Survival.* The obligations of this contract that cannot be performed before closing will survive closing, and the doctrine of merger does not apply. In case of conflict between the Closing Documents and this contract, the Closing Documents control.

14.15. *Ambiguities Not to Be Construed against Party Who Drafted Contract.* The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this contract.

15. Prohibited Interest in Contracts.

15.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

15.02. Seller warrants and certifies as follows:

(i) Seller and its officers, employees and agents are neither officers nor employees of the City.

(ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

15.03. Seller acknowledges that City's reliance on the above warranties and certifications is reasonable.

16. Public Information.

Seller acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands:

Buyer:

City of San Antonio,
a Texas municipal corporation

By: _____

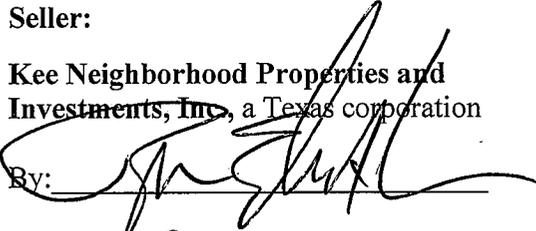
Printed
Name: _____

Title: _____

Date: _____

Seller:

**Kee Neighborhood Properties and
Investments, Inc.**, a Texas corporation

By:  _____

Printed
Name: ROGER EDWARDS

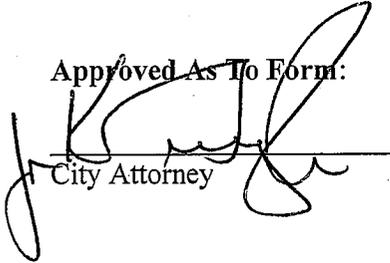
Title: PRESIDENT

Date: 06-17-2008

Attest:

City Clerk

Approved As To Form:



City Attorney

Title Company Acknowledgment and Receipt

Seller: Kee Neighborhood Properties and Investments, Inc.

Address: 15059 Churchill Estates Boulevard, San Antonio,
Texas 78248-0913

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property: Lot 1, Block 2, NCB 10183, Dell-View Subdivision, Unit I,
City of San Antonio, Bexar County, Texas, according to plat
recorded in Volume 3377, Page 93, Deed and Plat Records,
Bexar County, Texas

Title Company agrees to act as escrow agent according to the terms of this Contract. Further, Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

LandAmerica Lawyers' Title

By: _____

Printed
Name: _____

Title: _____

Date: _____

Title Company Receipt for Earnest Money

Seller: Kee Neighborhood Properties and Investments, Inc.

Address: 15059 Churchill Estates Boulevard, San Antonio,
Texas 78248-0913

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Property: Lot 1, Block 2, NCB 10183, Dell-View Subdivision, Unit I,
City of San Antonio, Bexar County, Texas, according to plat
recorded in Volume 3377, Page 93, Deed and Plat Records,
Bexar County, Texas

Title Company acknowledges receipt from Buyer of earnest money in the amount set forth below:

Amount: _____

LandAmerica Lawyers' Title

By: _____

Printed
Name: _____

Title: _____

Date: _____

Exhibit A

Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller is a corporation duly organized, validly existing, and in good standing under the laws of the state of Texas with authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.

2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.

3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.

4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.

5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.

6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.

Exhibit B

Notices, Statements, and Certificates

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

Notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit C

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

SPECIAL WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)

Grantor: Kee Neighborhood Properties and Investments, Inc.

Grantor's Mailing Address (including county): 15059 Churchill Estates Boulevard, San Antonio, Texas 78248-0913 (Bexar County)

Grantee: City of San Antonio

Grantee's Mailing Address (including county): P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvements Management Services) (Bexar County)

Consideration: \$931,500

Property: Lot 1, Block 2, NCB 10183, Dell-View Subdivision, Unit I, City of San Antonio, Bexar County, Texas, according to plat recorded in Volume 3377, Page 93, Deed and Plat Records, Bexar County, Texas

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, and conveys to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold to Grantee, and Grantee's heirs and assigns forever.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereto, by, through, and under Grantor but not otherwise

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

Grantor warrants that the Property is his sole and separate property.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

Date: _____

Kee Neighborhood Properties and Investments, Inc., a Texas corporation

By: _____

Printed Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS ★

COUNTY OF BEXAR ★

This instrument was acknowledged before this date, by _____, of Kee Neighborhood Properties and Investments, Inc., a Texas corporation, in the capacity therein stated and on behalf of that corporation.

Dated: _____

Notary Public, State of Texas

My Commission expires: _____

Authorizing Ordinance: ??????????

Approved as to Form:

City Attorney

After recording, please return to:

City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvements Management Services)

Exhibit D

Office Lease
(Leaseback to Kee Neighborhood Properties and Investments, Inc.)

Table of Contents

1. Basic Information, Definitions.....	21
2. Grant.....	22
3. Rent.....	22
4. Term, Renewal.....	22
5. Tenant’s Affirmative Promises.....	22
6. Indemnity.....	23
7. Tenant’s Negative Promises.....	25
8. Landlord’s Affirmative Promises.....	25
9. Landlord’s Negative Promise.....	25
10. Alterations.....	25
11. Insurance.....	25
12. Environmental Matters.....	28
13. Landlord’s Municipal Powers.....	30
14. Prohibited Interests in Contracts.....	30
15. Casualty/Total or Partial Destruction.....	31
16. Condemnation/Substantial or Partial Taking.....	31
17. Holdover.....	31
18. Default, Remedies for Default.....	31
19. Warranty Disclaimer.....	37
20. Abandoned Property.....	37
21. Appropriations.....	37
22. Sublease, Assignment.....	37
23. Dispute Resolution.....	37
24. Miscellaneous.....	38
25. Public Information.....	40

1. Basic Information, Definitions.

Effective Date:

Authorizing Ordinance:

Landlord: City of San Antonio

Landlord’s Address: P.O. Box 830066, San Antonio, Texas 78283-3966 (Attention:
Kevin Sadler, CIMS)

Tenant: Kee Neighborhood Properties and Investments, Inc.

Tenant's Address: 15059 Churchill Estates Boulevard, San Antonio, Texas
78248-0913

Premises: Lot 1, Block 2, NCB 10183, Dell-View Subdivision, Unit I, City of San Antonio, Bexar County, Texas, according to plat recorded in Volume 3377, Page 93, Deed and Plat Records, Bexar County, Texas

Permitted Use: General office use

Commencement Date: *(to be the closing date of the sale between Buyer and Seller)*

Initial Term: *(to be 9 months after the commencement)*

2. Grant.

Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease.

3. Rent.

The occupancy right granted under this Lease is in partial consideration for Tenant's transfer of title to the Premises to Landlord, which is occur contemporaneously with the execution and delivery of this Lease.

4. Term, Renewal.

The term of this Lease is the Initial Term, unless sooner terminated as provided in this Lease.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use.

5.02. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; and (c) any rules and regulations for the Building and Common Areas adopted by Landlord.

5.03. Obtain and pay for all utility services used by Tenant.

5.04. Allow Landlord to enter the Premises to perform Landlord's obligations and to inspect the Premises.

5.05. Vacate the Premises and return all keys to the Premises on the last day of the Term.

5.06. On request, execute an estoppel certificate that states the Commencement Date and Termination Date of the lease, identifies any amendments to the lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of rent.

6. Indemnity.

6.01. The following definitions apply to the indemnity provisions of this Lease:

6.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of this Lease or Tenant's activities under it. Indemnified Claims include those arising from property damage and from personal or bodily injury, including death.

6.01.02. "Indemnitees" means Landlord and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

6.01.03. "Indemnitor" means Tenant.

6.02. Indemnitor must indemnify Indemnitees from all Indemnified Claims.

6.03. Indemnitor expressly assumes the obligation to indemnify Indemnitees from the consequences of their own negligence or from the negligence of any of them. If an Indemnified Claim is finally adjudged to have been proximately caused by the sole negligence of an Indemnitee, Indemnitor need not further indemnify that Indemnitee from liability arising from the adjudicated sole negligence. But Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been

adjudged to be solely negligent and must continue to indemnify other Indemnitees.

6.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees..

6.05. Indemnitor must promptly advise Landlord in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not Landlord is an Indemnitee as to a particular Indemnified Claim, Landlord may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. Landlord may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

6.06. In addition to the indemnity required under this Lease, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

6.07. Indemnitor may not settle any Indemnified Claim without Landlord's consent, whether or not Landlord is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. Landlord's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if Landlord is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give Landlord at least 10 days advance written notice of the details of a proposed settlement before it becomes binding.

6.08. Nothing in this Lease waives governmental immunity or other defenses of Indemnitees under applicable law.

6.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to Landlord for Indemnitees' 5% if Landlord is an Indemnified Party as to a particular Indemnified Claim. In such case, Landlord is responsible for seeking reimbursement for the shares allocable to other Indemnitees, if any.

6.10. If, for whatever reason, a court refuses to enforce the prescribed contribution arrangement as written, and only in that case, the parties must contribute to any Indemnified Claim in the same proportion as the trier of fact determines to be in accordance with their respective comparative fault relating to the Indemnified Claim. Indemnitor need look only to Landlord for Indemnitees' proportionate share

if Landlord is an Indemnified Party as to a particular Indemnified Claim. In such case, Landlord is responsible for seeking reimbursement for the shares allocable to other Indemnitees, if any.

7. Tenant's Negative Promises.

Tenant promises that it will not:

- 7.01. Use the Premises for any purpose other than the Permitted Use.
- 7.02. Create a nuisance.
- 7.03. Permit waste.
- 7.04. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.
- 7.05. Change Landlord's lock system.
- 7.06. Allow a lien to be placed on the Premises.

8. Landlord's Affirmative Promises.

Landlord promises that it will:

- 8.01. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
- 8.02. Obey all applicable laws with respect to Landlord's operation of the Building and Common Areas.

9. Landlord's Negative Promise.

Landlord promises that it will not interfere with Tenant's possession of the Premises as long as Tenant is not in default.

10. Alterations.

Physical additions or improvements to the Premises made by Tenant become the property of Landlord.

11. Insurance.

11.01. Tenant must maintain throughout the term of this Lease, as it may be extended, insurance coverage written on an occurrence form, by companies

authorized and admitted to do business in the State of Texas, rated A or better by A.M. Best Company or otherwise acceptable to Landlord, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord
2. Employer's Liability	\$500,000/\$500,000/\$500,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of \$1,000,000 per-occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of \$1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of the Tenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements.

11.02. Each insurance policy required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 60-days' prior written notice has been given to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

Department of Capital
Improvements Management
Services
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director"

"The insurance provided by Tenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Lease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio. This policy cannot be invalidated as to Landlord because of Tenant's breach of representation, warranty, declaration, or condition of this policy."

11.03. If Tenant makes leasehold improvements, Tenant must provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance required by Landlord's Risk Manager. The policies likewise must be in amounts required by Landlord's Risk Manager and must cover all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Tenant must maintain the insurance during the construction phase. Tenant or its contractors or subcontractors must further provide payment and performance bonds naming Landlord as indemnitee. If the construction is minor, Tenant may request the requirements of this Section be waived, but a waiver may be granted only by Landlord's Risk Manager. In deciding whether to waive, Landlord's Risk manager has absolute discretion. The Risk Manager may make the waiver without further action of council.

11.04. Within 30 days after the Commencement Date and promptly after Landlord's later request, Tenant must, at its own expense, deliver certificates to Landlord's Risk Manager and to the City Clerk, reflecting all required insurance

coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Landlord, Tenant must send Landlord documentation acceptable to Landlord that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Landlord may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Landlord does so and the changes would increase premiums, Landlord will discuss the changes. If Landlord still wants the changes after discussion, Tenant must make the changes and pay the cost thereof. Landlord's review and approval of a certificate does not waive the certificate's noncompliance with the requirements of this Lease.

11.05. The Notices and Certificates of Insurance must be provided to the same addresses as for notices of cancellation.

11.06. Nothing in this Lease limits Tenant's liability for damages to persons or property resulting from Tenant's activities or the activities of Tenant's agents, employees, sublessees, or invitees.

11.07. Landlord disclaims an employee, agent, or invitee relationship with any person whose presence on the Premises is through Tenant. Claims resulting from assertions of tort liability or any obligation for which Tenant may be liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme are the sole obligation of Tenant.

11.08. Landlord will self-insure as it deems advisable. As a political subdivision of the State of Texas, Landlord is subject to the Texas Tort Claims Act, and the obligations of Landlord and the rights of persons claiming against Landlord are subject to that Act.

12. Environmental Matters.

12.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

12.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

12.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

12.04. In its use of the Premises, Tenant must comply with all applicable Environmental Laws and must cause its employees, agents, and contractors on the Premises to do so as well. Tenant will obtain all permits required under Environmental Law for its use of the Premises. At least 180 days before expiration of any such permit, Tenant must present proof to Landlord that it has applied for renewal.

12.05. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Property. Tenant further must not to handle, use, or otherwise manage any Hazardous Material on the Premises or the Property in violation of any Environmental Laws or in any but a reasonable and prudent manner.

12.06. Tenant must to immediately provide to Landlord copies of: (i) any documents required to be submitted to a Governmental Authority under Environmental Law; (ii) any notice alleging a violation of Environmental Law, or (iii) any demand from or allegation by any third party in relation to Hazardous Materials or Environmental Law. Tenant must promptly deliver to Landlord any information it receives regarding any Release of Hazardous Materials on, to, from, or about the Premises.

12.07. Landlord may conduct, at Tenant's expense, periodic inspections of the Premises and Tenant's operations thereon to assure compliance with Tenant's environmental covenants. Tenant need not pay the expense of more than such inspection in any 12-month period.

12.08. If Tenant breaches any of its representations, warranties or covenants, Tenant at its sole expense, must take all actions required, including environmental cleanup of the Premises, to comply with the representations, warranties, and covenants or applicable law. Tenant must take all action required by applicable Environmental Laws. If Tenant's actions under this provision involve cleaning up a Release of Hazardous Materials, Tenant must perform the cleanup consistently with residential use of the Premises and will not use any institutional controls or engineering controls in lieu of clean-up. Tenant will further obtain a Certificate of Completion from the TCEQ's Voluntary Cleanup Program. Institutional controls include laws, rules, or regulations or private prohibitions limiting use of a property, such as a prohibition against water well use within a certain contaminated track or area of a local government's jurisdiction. Engineering controls mean physical apparatus such as an asphalt or concrete cap, detention basin, extraction well, or other engineered device to control, contain, or remove pollutants.

12.09. Tenant must indemnify Landlord and hold Landlord and its officials, employees, and contractors from loss, cost, liability, or expense (including, but not limited to, attorneys' fees and expenses, including all attorney's fees and expenses

incurred by Tenant in enforcing this indemnity) arising from or relating to breach of Tenant's environmental representations, warranties, and covenants..

13. Landlord's Municipal Powers.

Landlord is a municipality as well as landlord under this Lease. As a municipality, it may from time to time exercise municipal powers unrelated to the Lease that will nevertheless adversely affect Tenant. Such actions may include redirection of traffic, street closures, or other actions intended to facilitate public safety, the public interest, or the conduct of major events. No such action by Landlord as a municipality is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Likewise, no breach of contract or other duty by municipal utility providers is a breach of Landlord's duties as landlord or entitles Tenant to any relief under this Lease. Tenant has no more rights under this Lease than it would if its landlord were a private entity.

14. Prohibited Interests in Contracts.

14.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

14.02. Tenant warrants and certifies as follows:

- (i) Tenant and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

14.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Casualty/Total or Partial Destruction.

Tenant bears all risk of casualty loss. If the Premises are damaged or destroyed and Tenant does not want to rebuild, its only remedy is to terminate the Lease by written notice to Landlord.

16. Condemnation/Substantial or Partial Taking.

16.01. If the Premises cannot be used for the purposes contemplated by this lease because of condemnation or purchase in lieu of condemnation, this lease will terminate.

16.02. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

16.03. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

17. Holdover.

If Tenant holds over after termination or expiration of this Lease, it is a Tenant at sufferance under the terms of this Lease, except that the Base Rent is \$5,000 monthly, payable in advance on the first day of each month.

18. Default, Remedies for Default.

18.01. If Tenant permits or fails to prevent any of the following occurrences, it is a Tenant event of default:

18.01.01. Tenant fails to pay when due any installment of Rent, and such default continues for five days after written notice from Landlord, but Tenant is not entitled to more than one notice of a delinquency in regularly recurring rent installments during any 12-month period. After the first such delinquency, Tenant is in default for failure to pay regularly recurring Rent installments timely even if Landlord does not give notice.

18.01.02. Tenant fails to comply with any term, provision or covenant of this Lease, other than the payment of rental or expenses demanded by Landlord and does not cure such failure within 30 days after written notice thereof to

Tenant, or any representation or warranty by Tenant or any guarantor of this Lease is false or misleading in any material respect when given to Landlord.

18.01.03. This Lease or the Premises or any part thereof is taken upon execution or by other process of law directed against Tenant, or is taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant, and the attachment is not to be discharged or disposed of within 30 days after the levy thereof.

18.01.04. Tenant or any guarantor of the Lease files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or voluntarily takes advantage of any such law or act by answer or otherwise, or is dissolved, or makes a transfer in fraud of creditors or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature.

18.01.05. Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant or any guarantor of the Lease is instituted against Tenant or such guarantor, as the case may be, or a receiver or trustee of all or substantially all of the property of Tenant or any guarantor is appointed, and such proceeding is not dismissed or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

18.01.06. Tenant deserts, vacates or abandons all or any portion of the Premises, or ceases to physically occupy any substantial portion of the Premises and continuously operate its business on the Premises, or fails to commence business operations in the Premises on or before the Commencement Date. If Tenant removes or makes preparations to remove its goods, equipment, inventory, and fixtures (other than in the normal course of business) in amounts sufficient to indicate a probable intent to vacate the Premises, Tenant's breach is established conclusively.

18.01.07. Tenant does or permits to be done anything which creates a lien upon the Premises which is not removed or released within 30 days of its filing.

18.01.08. The business operated by Tenant is closed for failure to pay any State sales tax as required or for any other reason, other than repairs, death of the principals of Tenant, or normal business holidays.

18.01.09. This Lease or the estate of Tenant hereunder is transferred to, or passes to any other person or party except in a manner permitted herein.

18.02. Remedies Upon Default. Upon the occurrence of any Tenant event of default, Landlord has the option to pursue anyone or more of the following:

18.02.01. In addition to, and without limiting any other remedies available to Landlord at law or in equity, immediately terminate this Lease and all rights of Tenant hereunder. If that event, Tenant must immediately surrender the Premises to Landlord. If Tenant fails to do so, Landlord may, without prejudice to any other remedy, enter and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages.

18.02.02. Enter upon and take possession of the Premises or any part thereof and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor without having terminated the Lease.

18.02.03. Enter upon the Premises, by force if necessary, without being liable for prosecution or any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. In such case, Tenant must reimburse Landlord on demand for expenses Landlord may incur in thus effecting compliance with Tenant's obligations. Landlord is not liable for any damages resulting to the Tenant from such action.

18.02.04. Alter all locks and other security devices at the Premises without terminating this Lease. If Landlord does so:

(i) Landlord need not allow Tenant re-entry to the Premises or provide Tenant with a new key unless and until Tenant cures any and all defaults under this Lease,

(ii) Landlord may refuse to give Tenant a new key unless Tenant increases its security deposit by an amount determined by Landlord,

(iii) if Landlord does provide Tenant with a key, it will do so only during the Landlord's regular business hours, and

(iv) Tenant must obligated to pay Landlord all costs and expenses incurred by Landlord in connection with altering the locks and other security devices.

Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.03. Repossession and Alteration of Locks. Landlord's exercise of one or more remedies is not acceptance of Tenant's purported surrender of the Premises, whether by agreement or by operation of law. Surrender can occur only by the written agreement of Landlord and Tenant. No such alteration of locks or other security devices and no removal or other exercise of dominion by Landlord over the property of Tenant or others at the Premises is unauthorized or constitutes conversion. Tenant consents to Landlord's exercise of dominion over Tenant's property within the Premises in case of Tenant's default. Tenant waives (A) all claims for damages by reason of such reentry, repossession, or alteration of locks or other security devices and (B) all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings, or other legal process. Re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect. Landlord is not liable in trespass or otherwise for such re-entry. Landlord's remedies and rights under this Lease entirely supersede and supplant the provisions of Texas Property Code § 93.002.

18.04. Effect of Termination. If Landlord terminates the Lease for an event of default, then despite the termination, Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of termination.

18.05. Effect if No Termination. If Landlord repossesses the Premises without terminating the Lease, then Tenant is liable for and must pay Landlord, at the Address for Payment of Rent, all Rent accrued to the date of repossession, plus Rent due during the remainder of the term until the date of expiration. Tenant's obligation is diminished by any net sums thereafter received by Landlord through reletting the Premises (after deducting expenses of reletting). Tenant is liable for the full Rent for the remainder of the Lease term if the Premises are not relet. In no event is Tenant entitled to any excess of any rental obtained by reletting over and above the Rent. Actions to collect amounts due by Tenant to Landlord may be brought at one time or from time to time, on one or more occasions, without the necessity of Landlord's waiting until expiration of the Lease term. In the alternative, if Landlord relets the Premises, Landlord may recover from Tenant (A) the unpaid Rent accrued before Tenant's default, plus (B) the then present value of the amount by which the Rent for the remainder of the term exceeds the rental received from reletting the Premises. Present value is computed by allowing interest at 1% in excess of the discount rate of the Federal Reserve Bank of Dallas, Texas. No repossession of the Premises by Landlord hereunder is either an acceptance of surrender or an election to terminate this Lease. Neither does it cause a forfeiture of Rent remaining to be paid during the balance of the Lease term, unless a written notice of such intention is given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding Landlord's right to relet and collect the difference in rental values, Landlord may, at any time after default, terminate this Lease. Landlord also may decline to repossess the Premises, and may from time to time, without terminating this Lease, recover all rent as it becomes due.

18.06. Liability for Costs Incurred. If Tenant defaults, in addition to any other sum required by this Lease, Tenant must also pay to Landlord, at the Address for Payment of Rent, (A) brokers and management fees incurred by Landlord in connection with reletting the whole or any part of the Premises; (B) the costs of removing and storing Tenant's or any other occupant's property, (C) the costs of repairing, altering, remodeling, or otherwise putting the Premises into a condition acceptable to a new tenant or tenants, (D) all rental concessions as a result of reletting, and (E) any and all other costs, fees, and expenses associated with reletting the Premises and all reasonable expenses incurred by Landlord in repossessing the Premises and in enforcing or defending Landlord's rights and/or remedies, including reasonable attorney's fees, which shall be not less than 10% of all sums then owing by Tenant to Landlord.

18.08. Obligation to Reimburse. If Tenant fails to timely make any payment or cure any default, Landlord, without an obligation to do so and without waiving default, may make the payment or remedy the other default for the account of Tenant (and enter the Premises for such purposes). Thereupon Tenant must pay upon demand, all costs, expenses, and disbursements (including reasonable attorney's fees) incurred by Landlord in taking the remedial action.

18.09. Default by Landlord. If Landlord defaults, Tenant's exclusive remedy is an action for damages (Tenant hereby waiving the benefit of any laws granting it a lien upon the property of Landlord or on rent due Landlord). Tenant is not permitted to withhold Rent. Before filing any such action Tenant must give Landlord 30-days prior written notice specifying the alleged default and giving Landlord opportunity to cure. Unless and until Landlord fails to timely cure a default after written notice, Tenant has no remedy or cause of action by reason thereof. All obligations of Landlord are covenants, not conditions. Landlord's liability to Tenant for default is limited to actual, direct, but not consequential, damages. **Tenant hereby waives its statutory lien under § 91.004 of the Texas Property Code.**

18.10. Payments After Termination. Tenant's payment of money to Landlord after termination or after notice of default (other than a demand for payment of money within any applicable cure period) does not reinstate, continue, or extend the term or affect any notice given to Tenant prior to the payment. After the service a suit or after any final judgment granting Landlord possession of the Premises, Landlord may receive and collect any sums due under the terms of this Lease or may otherwise exercise any of its rights and remedies hereunder. Such payment, whether as rent or otherwise, does not waive any notice or a termination of Tenant's right of possession, or in any manner affect any suit theretofore commenced or judgment previously obtained.

18.11. Rights Respecting Personal Property. If Landlord takes possession of the Premises under the authority of this Lease, Landlord may keep in place and use

all furniture, fixtures, and equipment at the Premises, including that owned by or leased to Tenant at all times before foreclosure thereon by Landlord or repossession thereof by any lessor thereof or lienholder thereon. Landlord may also remove from the Premises (without obtaining a distress warrant, writ of sequestration, or other legal process) all or any part of the furniture, fixtures, equipment, and other property and place same in storage anywhere in the county in which the Premises are located. In such case, Tenant is liable to Landlord for costs incurred by Landlord in the removal and storage and must indemnify Landlord from all loss, damage, cost, expense, and liability arising from or relating to the removal and storage. Landlord also may relinquish all or any part of the furniture, fixtures, equipment, and other property to any person ("Claimant") who presents to Landlord a copy of any instrument represented to have been executed by Tenant, if the instrument purports to grant Claimant the right under various circumstances to take possession of the property. Landlord need not inquire into the authenticity of the instrument or Tenant's or Tenant's predecessor's signature thereon. Landlord further need not investigate or inquire into the validity of the factual or legal basis on which Claimant purports to act. Tenant indemnify Landlord from all loss, cost, liability, or expense arising from or relating to Landlord's relinquishment of property to a Claimant. These rights of Landlord are additional to any other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates that the rights herein granted Landlord are commercially reasonable.

18.12. Delinquent Rents and Other Sums. Any amounts owing hereunder not paid within five days after they are due bear interest at the lesser rate of (i) the maximum nonusurious rate allowed by law or (ii) 18% per annum, the interest to accrue from the due date of the payment until received by Landlord. Similarly, if Landlord pays any obligations allocated to Tenant under this Lease, those amounts, if not repaid within five days of Landlord's demand, bear interest at the above applicable rate from the date of Landlord's advance until received by Landlord. In addition to the interest due on delinquent rents and other sums hereunder, if Tenant fails to make any payment when due, and such failure to pay continues for a period of five days (without any notice), then Tenant must pay, in addition to the amount due and owing, a late charge of 10% of such amount due and owing. The late payment charge is liquidated damages for Landlord's administrative inconvenience in dealing with late payments. The damages suffered by Landlord in case of a late payment are not capable of being ascertained precisely, but the foregoing charge is a reasonable and good faith estimate by the parties of the extent of the damage, which is reasonably certain to occur. Receipt of the late payment charge does not void the occurrence of an event of default or eliminate any of Landlord's remedies therefor.

18.13. Cumulative Remedies. Each right and remedy provided to Landlord in this Lease is cumulative to every other right or remedy provided to Landlord by this Lease or applicable law, including, but not limited to, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Landlord of one or more of the right or remedy does not preclude the simultaneous or later exercise by Landlord of another remedy. All costs incurred by Landlord in

collecting any amounts and damages owed by Tenant under this Lease or to enforce any provision of it, including reasonable attorneys' fees from the date any such matter is turned over to litigation counsel, are also recoverable by Landlord from Tenant.

19. Warranty Disclaimer.

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease. Tenant acknowledges it has had ample opportunity to perform due diligence regarding the Premises and accepts the Premises in their present condition, as-is.

20. Abandoned Property.

Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

21. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year of a term. If the City Council fails to appropriate money for this Lease in an annual City of San Antonio Budget, the City may terminate this Lease and have no further liability.

22. Sublease, Assignment.

Tenant cannot assign or sublease this lease without Landlord's prior written consent. Assignments include any transaction in which (A) a material part of Tenant's assets are sold outside the ordinary course of business or (B) a change in the identity of those owning, holding, or controlling the power to vote of 50% of the equity interest in Tenant.

23. Dispute Resolution.

23.01. Before bringing any action arising out of this agreement, including an action for declaratory relief but not an action specifically excepted below, the disputants must first submit in good faith to mediation. The parties may not assert limitations, laches, waiver, and estoppel based upon attempts to mediate.

23.02. Filing suit on a claim that should be mediated waives the filer's right to demand mediation. But one party's waiver does not affect another party's right. A defendant does not waive mediation for so long as, within a reasonable time after

appearing, the defendant gives written notice to the plaintiff or its counsel of intent to require compliance with this paragraph.

23.03. Mediation must be conducted in San Antonio, Bexar County, Texas.

23.04 The party desiring relief has the burden to initiate mediation. Waiting for another party to initiate mediation does not waive the right to it.

23.05. If the parties can otherwise agree on a mediator, they may do so. Alternatively, either party may petition any court of competent jurisdiction to appoint a mediator. The only predicate issues the court need consider before appointing a mediator are whether (i) the copy of the contract before the court is authentic and (ii) the contract was duly signed and delivered by all parties to be bound to mediate. If neither of those issues is denied under oath, the court may appoint a mediator upon motion, without trial.

23.06. Mediator fees must be borne equally.

23.07. The parties need not mediate before going to court (1) for either party to seek emergency injunctive relief or (2) for Landlord to seek forcible entry and detainer relief against Tenant.

24. Miscellaneous.

24.01. *Applicable Law.* This Agreement is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this agreement are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this agreement is only in Bexar County, Texas.

24.02. *Severability.* If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

24.03. *Successors.* This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

24.04. *Integration.* **This Written Agreement Represents The Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

24.05. *Modification.* This Agreement may be changed only by a written agreement, signed by the party against whom enforcement of any modification is

sought. Subject to that restriction, any of this Agreement's terms may be modified by the party entitled to their benefit, but no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

24.06. *Third Party Beneficiaries.* This Agreement benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

24.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth at the beginning. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice.

24.08. *Pronouns.* Plural constructions include the singular, and singular constructions include the plural. Whether a pronoun is masculine, feminine, or neuter does not affect meaning or application of the relevant term. The words "herein," "hereof," and other, similar compounds of the word "here" refer to the entire Agreement, not just to a part of it.

24.09. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

24.10. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this agreement, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties.

24.11. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this agreement.

24.12. *Administrative Agreements.* All certificates, memoranda, and modifications of nonmaterial rights and obligations arising under this Lease may be signed on behalf of Landlord and delivered to Tenant by the Director of Capital Improvements Management Services, without further council action.

25. Public Information.

Tenant acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

City of San Antonio, a Texas
municipal corporation

**Kee Neighborhood Properties and
Investments, Inc.**, a Texas corporation

Signature: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 17
Council Meeting Date: 9/4/2008
RFCA Tracking No: R-3760

DEPARTMENT: Capital Improvements
Management Services

DEPARTMENT HEAD: Mike Frisbie

COUNCIL DISTRICT(S) IMPACTED:
Council District 1, Council District 4

SUBJECT:
Acquisition of 2 (two) Properties for Fire Station Capital Improvement Program

SUMMARY:

This ordinance appropriates funds and authorizes payment in the amount of \$1,663,880.00 for the acquisition of fee simple title in two (2) parcels of privately owned real property and for other expenses associated with the replacement of Fire Station No. 19 and Fire Station No. 2. This ordinance authorizes the City to acquire these properties at fair market value by negotiation and/or condemnation, and authorizes the City Attorney and/or designated special counsel to file eminent domain proceedings, if necessary.

BACKGROUND INFORMATION:

The San Antonio Fire Department has identified Fire Stations No. 19 and No. 2 as two of seven stations to be part of the Fire Station Replacement capital project.

Funds are now requested for the acquisition of fee simple title in two (2) separate parcels of privately owned real property and for other expenses associated with acquiring these properties, for the replacement of Fire Station No. 19 as well as Fire Station No. 2.

The replacement project for Fire Station No. 19 will allow for the outdated fire station currently located at 1310 Vance Jackson, in Council District 1, to be replaced. Land has been identified on Vance Jackson. The site selected is located in Council District 1.

The replacement project for Fire Station No. 2 will allow for the outdated fire station currently located at 601 Gillette, in Council District 3, to be replaced. Land has been identified on West Villaret Blvd. The site selected is located in Council District 4.

Both new locations will better serve the areas the stations currently respond to.

Staff is still researching suitable land for the replacement and the building of the other 5 (five) facilities in the Fire Station Replacement capital project which include:

Fire Station No. 18, located at 1463 S. W.W. White Road is located in Council District 2;

Fire Station No. 27, located at 1518 Hillcrest is located in Council District 7;
Fire Station No. 28, located at 815 El Monte is located in Council District 1;
Fire Station No. 30, located at 919 Gembler is located in Council District 2; and
Fire Station No. 32, located at 2235 Babcock is located in Council District 8.

Additional items will be brought forward to City Council for approval once suitable properties are identified for these other five (5) replacements.

These acquisitions are consistent with policies adopted by the City Council for the acquisition of properties for replacement of the seven stations.

City staff continues to work toward acquiring these properties through negotiation. However, some properties may be unobtainable through the standard acquisition process due to clouded title issues, inability to contact the owners, or stalled negotiations regarding the perceived value of the property. Fee simple title is required for the Fire Station Capital Improvement Program.

ISSUE:

Property acquisitions, including those proposed by this ordinance, are a necessary step in implementing the Fire Station Replacement Program. For this reason, staff is requesting that City Council authorize the acquisition of these properties by condemnation in the event we are unable to acquire them through willing negotiations.

ALTERNATIVES:

The alternative to approval of this item would be to continue negotiations for the property acquisitions. This option could result in project delay should negotiations continue to be unsuccessful. Another alternative may require identifying other locations for the Fire Station Capital Improvement Program. These locations have been identified.

FISCAL IMPACT:

This Ordinance: 1) amends the budget of the Fire Station Replacement capital project, 2) appropriates funds and 3) authorizes expenditures for land acquisition, title and associated fees, as shown in the table below:

Project	Amount	Funding Source
FS # 19	\$981,500.00	Fire Department's Issued 2006 Certificate of Obligations and Tax Notes
FS # 2	\$682,380.00	Fire Department's Issued 2006 Certificate of Obligations and Tax Notes

Funding in the amount of \$453,880.00 will be from the 2006 Issued Certificates of Obligations and \$1,210,000.00 will be from the 2006 Issued Tax Notes, for a total appropriation of \$1,663,880.00. Funds are currently available in the Fire Department's 2006 Issued Certificates of Obligations and 2006 Issued Tax Notes. All appropriations are in accordance with the FY 2008 Adopted Capital Improvement Program Budget.

RECOMMENDATION:

Staff recommends approval of the acquisition of each of the parcels identified in this ordinance in order to expedite the replacement of Fire Station No.19 and No. 2 to ensure the health and safety of our citizens.

ATTACHMENT(S):

File Description	File Name
Sales Contract Fire Station No. 19	Sales Contract FS #19.pdf
Sales Contract Fire Station No. 2	Sales Contract FS #2.pdf
Map Fire Station No. 19	Map FS#19.pdf
Map Fire Station No. 2	Map FS #2.pdf
NCB Table of Property	NCB Table FS 2-19.doc
Map Fire Station No 2	#3760 FS 2 comparison.pdf
Map Fire Station No 19	#3760 FS 19 comparison.pdf
Voting Results	
Ordinance/Supplemental Documents	200809040754.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

George Rodriguez	Assistant Director	Capital Improvements Management Services
Rodney Hitzfelder	Deputy Fire Chief	SAFD
Mike Frisbie	Director	Capital Improvements Management Services

APPROVED FOR COUNCIL CONSIDERATION:

Penny Postoak Ferguson Assistant City Manager