

AN ORDINANCE

APPROVING A BROWNFIELDS REDEVELOPMENT PROGRAM PROJECT AND AUTHORIZING PAYMENT IN AN AMOUNT UP TO \$27,144.12 FROM ENVIRONMENTAL PROTECTION AGENCY GRANT FUNDS TO ATC ASSOCIATES, INC., FOR ENVIRONMENTAL SITE ASSESSMENT SERVICES AT 1726 W. COMMERCE FOR THE BENEFIT OF OWNERS, PAUL MAURICIO AND THE ESTATE OF DELIA C. MAURICIO.

* * * * *

WHEREAS, the City of San Antonio was awarded a \$200,000.00 grant by the Environmental Protection Agency (EPA) to fund environmental assessments of sites in order to encourage the redevelopment of abandoned, vacant, or underutilized gasoline filling stations, and petroleum contaminated sites located within the City of San Antonio; and

WHEREAS, as defined by the EPA, brownfields are “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination”; and

WHEREAS, no funds are used to perform remediation or clean-up; and

WHEREAS, the intent of the Environmental Site Assessments is to determine whether or not environmental contamination is present on the subject properties and to identify the impact, if any, the contamination may have on redevelopment; and

WHEREAS, the 1726 W. Commerce project, which EPA has reviewed and approved for eligibility requirements, is located in the City of San Antonio’s empowerment zone on the Westside of San Antonio; and

WHEREAS, this site is comprised of an abandoned gas station and automobile repair facility; and

WHEREAS, the owners, Paul Mauricio and the Estate of Delia C. Mauricio, plans to redevelop the property into retail storefronts; and

WHEREAS, the environmental contractor selected for this site assessment was approved through the On-Call Professional Environmental Engineering Services Contract approved by City Council and the City’s Environmental Services Department, which serves as the program’s quality control arm under the City’s grant agreement with the EPA; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is authorized to execute an agreement with the property owners, Paul Mauricio and the Estate of Delia C. Mauricio, to provide

environmental site assessment services at 1726 W. Commerce, in connection with a Brownfields Redevelopment Program Project. A copy of said agreement, entitled Participation Understanding with Consent for Promotional Use and Right of Access, is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. Fund 26010000 entitled “Environmental Protection Agency” and Internal Order 161000000052 entitled “Brownfields Petroleum Assessment Grant”, are hereby designated for use in the accounting for the fiscal transaction in the site assessment for 1726 W. Commerce, the Brownfields Redevelopment Program Project described herein.

SECTION 3. The sum of \$27,144.12 is hereby appropriated in the above designated fund and will be disbursed from GL 5201040 “Fees to Professional Contractors”. Payment is authorized to ATC Associates, Inc. under an existing “on call” professional environmental engineering services contract for said environmental site assessment services upon issuance of a Purchase Order and completion of the assessment.

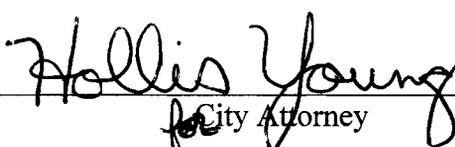
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance shall be effective on and after March 11, 2007.

PASSED AND APPROVED this 1st day of March, 2007.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Voting Results

Name: CONSENT AGENDA Items 5-39C, except Items 6,8,9,10,12,15,16,18,19,25,26,37

Date: 03/01/07

Time: 10:14:05 AM

Vote Type: Multiple selection

Description:

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

CITY OF SAN ANTONIO BROWNFIELDS REDEVELOPMENT PROGRAM

Participation Understanding with
Consent for Promotional Use
and
Right of Access

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Under authority of Ordinance No. _____, passed and approved on _____ Mr. Paul Mauricio, "Participant", owner, in his individual capacity and as Independent Executor of the Estate of Delia C. Mauricio, of the property located at 1726 W. Commerce (street address), more particularly described as NCB 2310 BLK 1 LOT N 100 FT OF W. 50.5 OF 1 & N 100 FT OF 2 OR A18 ("the Property"), and the City of San Antonio ("City") enter into this Agreement, and for exchange of consideration recited herein, agree as follows:

**I. PROGRAM PARTICIPATION
and Promotional Consent**

Participant(s) hereby urge and give consent to the City for the Property to be included in the City of San Antonio Brownfields Program ("the Program"), to become a part of the local brownfields inventory, and extend to the City opportunity to promote the property as a San Antonio Brownfields site at any local, state, national meeting or conference, or any media event deemed appropriate by the City. Participant agrees to cooperate in appearing at such events and sharing program experiences with others if invited to do so by the City. Participants consent to allow Program personnel to photograph the site at various phases of inspection and / or development for promotional purposes.

Participant warrants to the City his authority to provide such consent and to enter into this Agreement.

II. ENVIRONMENTAL SITE ASSESSMENT (ESA)

1. The aforesaid Property is hereby included in the City of San Antonio Brownfields Redevelopment Program.
2. The City will pay the cost of a Phase II Environmental Site Assessment(s) (ESAs), as the City may deem necessary for the property, not to exceed \$27,144.12.
3. The City reserves the right, but does not promise, to search for additional sources of funding or in-kind services from governmental entities if needed to complete the assessment in the event assessment costs exceed funds allocated to the Property.
4. Participant effects a grant of access to the City, as described below, and will similarly grant access to other governmental entities providing funding or in-kind services to complete participation in the Program.
5. Participant grants permission for the City or other governmental entities providing funding or in-kind services to use and share ESA(s) information and to release ESA information upon request.
6. Participant understands that the documentation produced under this Agreement is subject to the Texas Public Information Act and/or other public records disclosure laws. Owners, agents, developers, and others seeking environmental information about the Property may have access to ESA results as an "Open Record"; however, no person shall look to or rely upon the City, its employees, agents or its private consultants to warrant or guarantee ESA reports. Any person so relying shall do so at his/her own risk.
7. Participant understands this Agreement does not obligate the City to:
 - a. complete the ESA(s) if the cost of finalizing the assessment exceeds \$27,144.12, or
 - b. spend \$27,144.12 on the property if the cost of the ESA(s) is less than \$27,144.12, or
 - c. perform remediation on the property based on the information in the ESA(s), or

- d. assure or guarantee maintenance or enhancement of Property values on account of the ESA(s) or participation in the Program.
8. Participant understands this agreement is not effective until duly authorized by the City Council.
9. [Optional provision: Participant agrees to contribute \$_0_ to the ESA(s)]

III. RIGHT OF ACCESS

Participant having consented above to participate in the Program, and in consideration for City's acceptance of Participant's Property in the Program and in further consideration of the City's taking responsibility for performance of environmental investigation of said Property, Participant hereby grants and extends to the City of San Antonio, its agents, employees, and contractors the right of access under, over and across the Property for the purpose of performing investigation necessary to a Phase I, if further necessary, and / or Phase II ESA(s). The City of San Antonio, its agents, employees, contractors and assignees shall be permitted to enter upon said Property for such purpose.

IV. GENERAL PROVISIONS

1. PARTICIPANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PARTICIPANT's participation under this AGREEMENT, including any acts or omissions of PARTICIPANT, any agent, officer, director, representative, employee, consultant or subcontractor of PARTICIPANT, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT**

SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, AGREEMENT or otherwise, to any other person or entity. PARTICIPANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or PARTICIPANT known to PARTICIPANT related to or arising out of PARTICIPANT's participation under this AGREEMENT and shall see to the investigation and defense of such claim or demand at PARTICIPANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PARTICIPANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by PARTICIPANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. PARTICIPANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

2. This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas,

and is governed by the laws of the State of Texas.

Executed this _____ day of _____, 20_____.

OWNER:

Saul Mauricio, Individually *Saul Mauricio Individually*
Paul Mauricio, individually

Saul Mauricio *Saul Mauricio, as independent executor of the Estate of Delia C. Mauricio*
Paul Mauricio, as Independent Executor of the Estate of Delia C. Mauricio

CITY of SAN ANTONIO:

(insert printed name here)

Title: _____
City Manager, Assistant City Manager, or an Assistant to the City Manager

Approved as to form:

Office of the City Attorney
Michael Bernard, City Attorney

by: _____

Printed Name: _____
Assistant City Attorney

MEETING OF THE CITY COUNCIL

Track ordinance

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 36

DATE: MAR 01 2007

MOTION: _____

ORDINANCE NUMBER: 2007-03-01-0241

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

ROGER O. JACOBS District 1			
SHERI L. JOHNSON District 2			
ROLAND HUI-HERNANDEZ District 3			
RICHARD PEREZ District 4			
PATTI RADELO District 5			
DELECHA R. RAY District 6			
ELENA RODRIGUEZ District 7			
ART & BELL District 8			
KEVIN A. WRIGHT District 9			
CHRISTOPHER J. HAASS District 10			
THE HAYDEN GROUP District 11			

CONSENT AGENDA