AZJ:RN
09/04/14
Item No. 13

AN ORDINANCE 2014-09-04-0647

DECLARING AS SURPLUS AN IMPROVED TRACT OF CITY OWNED PROPERTY LOCATED AT 604 S. ALAMO STREET (FIRE STATION NO. 7), AND DESCRIBED AS LOT 4, BLOCK 4, NCB 13815 IN COUNCIL DISTRICT 1 AND AUTHORIZING ITS SALE TO ANDREW GOODMAN FOR $850,007.00; AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF A FUNDING AGREEMENT WITH THE SAN ANTONIO FIRE MUSEUM SOCIETY FOR A MATCHING FUNDS DONATION IN AN AMOUNT NOT TO EXCEED $150,000.00 FROM THE SALE PROCEEDS .

* * * * *

WHEREAS, the City's former Fire Station No. 7 is a two-story facility located at 604 S. Alamo consisting of 5,327 square feet, situated on 0.10 of an acre, and identified as Lot 4, Block 4, NCB 13815; and

WHEREAS, the former Fire Station which was built in 1924 was decommissioned in 2005, and is currently vacant and considered surplus to the City's needs; and

WHEREAS, the property was appraised at $797,000.00, advertised and received six bids with the winning bid submitted by Mr. Andrew Goodman; and

WHEREAS, the result of selling this property would place the property back on the tax rolls, which will generate revenue for the City of San Antonio as well as other taxing entities; and

WHEREAS this Ordinance declares the City's Fire Station No. 7 as surplus to the City and is agreeable to sell the property to Mr. Andrew Goodman for an amount of $850,007.00;

WHEREAS, the San Antonio Fire Museum Society is a 501(c) (3) charity; and

WHEREAS, the San Antonio Fire Museum Society works to preserve and exhibit artifacts, apparatus, documents and photos of the San Antonio Fire Department for the benefit and education of the general public; **NOW THEREFORE,**

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

SECTION 1. The following property is declared surplus to the needs of the City of San Antonio:

> Being an 0.10 acre tract of land out of NCB 13815, Block 4, Lot 4, as shown on on **Attachment I** and further described in the survey on **Attachment II.**

SECTION 2. The City advertised the property for sale according to law and received six bids, the City Council finds that the winning bid of $850,007.00 is a fair market value of the property, and is willing to sell the former Fire Station No. 7 to Mr. Andrew Goodman.

SECTION 3. The City Manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the City a contract and/or a deed without warranty conveying the above-described property to the high bidder in substantially the same form as **Attachment III**. The City Manager and her designee, severally, should take all actions necessary or convenient to effectuate the transaction, including executing all necessary or convenient instruments and agreements.

SECTION 4. The terms and conditions of Funding Agreement ("Agreement") with The San Antonio Fire Museum Society ("Society"), under which the City shall donate up to $150,000.00 to the Society under terms and conditions set forth in the Agreement, are hereby approved. A copy of the Funding Agreement, in substantially final form, is attached hereto and incorporated herein by reference for all purposes as **Attachment IV.** Funds in the amount of $150,000 are hereby appropriated in the FY 2014 Budget in Fund 11001000, Cost Center 7001990077, and General Ledger 5201040. Payment is subject to the conditions set forth in the Funding Agreement.

SECTION 5. The City Manager, and her designee, severally, are authorized twenty (20) business days from the effective date of this Ordinance within which to negotiate and execute the Funding Agreement, substantially according to the terms and conditions set forth in **Attachment IV.** If the Funding Agreement is not negotiated and executed within said twenty (20) business days, or if the parties cannot agree to terms of such contract within such time, then there shall be no authority to execute the Contract unless there is subsequent City Council approval.

SECTION 6. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 240000000060 and General Ledger 4903101.

SECTION 7. 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 8. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 4th day of September, 2014.

M A Y O R
Ivy R. Taylor

Attest:

Leticia M. Vacek, City Clerk

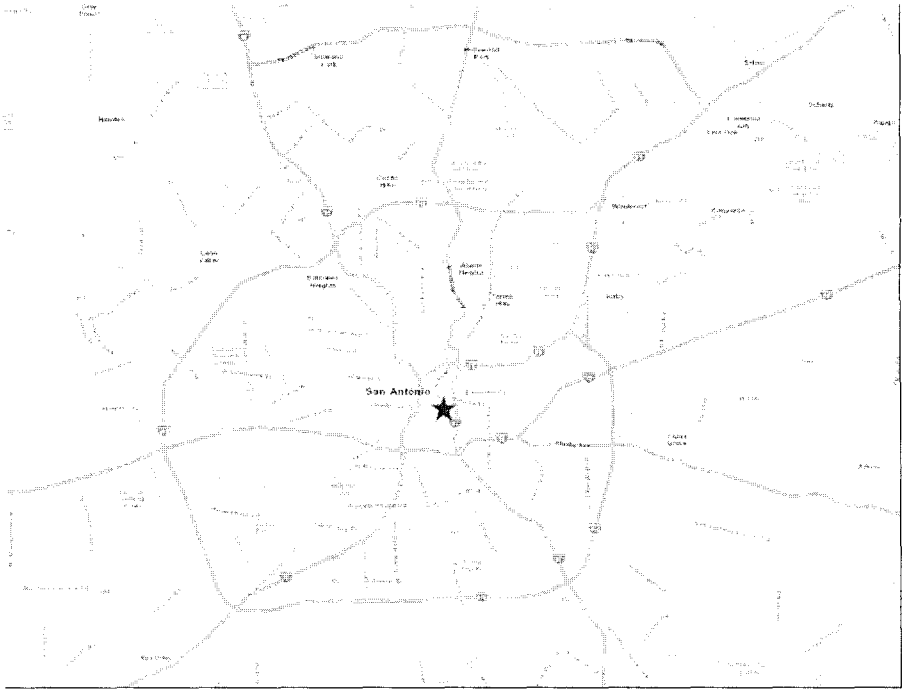
Approved As To Form:

Robert F. Greenblum, City Attorney

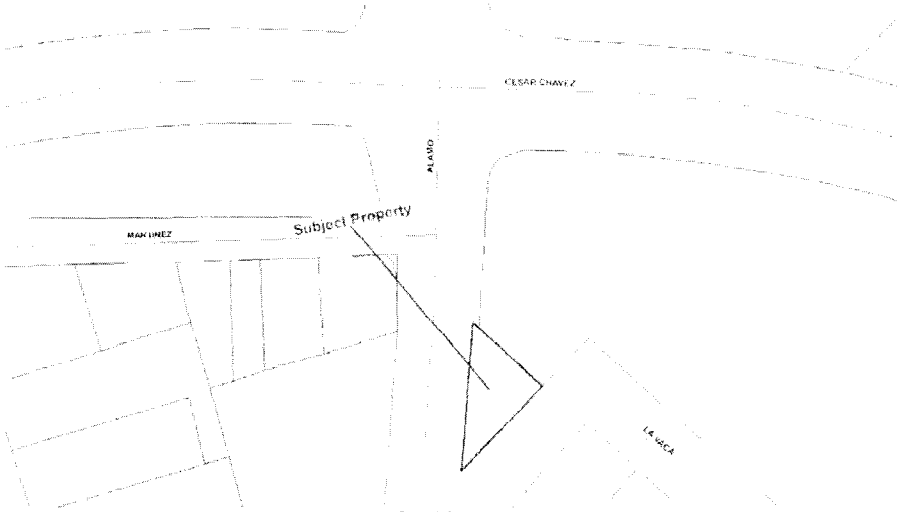
Agenda Item:	**13 (in consent vote: 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16A, 16B, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28A, 28B, 28C)**
Date:	09/04/2014
Time:	09:32:40 AM
Vote Type:	Motion to Approve
Description:	An Ordinance to declare as surplus an improved tract of city owned property located at 604 S. Alamo Street (Fire Station No. 7) in Council District 1, and authorizing its sale to Andrew Goodman for $850,007.00; and authorizing the negotiation and execution of an agreement with the Fire Museum Society for a matching funds donation in an amount not to exceed $150,000.00 from the sale proceeds. [Peter Zanoni, Deputy City Manager; Mike Etienne, Director, EastPoint & Real Estate Services Office]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Diego Bernal	District 1		x				
Keith Toney	District 2		x				x
Rebecca Viagran	District 3		x			x	
Rey Saldaña	District 4	x					
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Mari Aguirre-Rodriguez	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9	x					
Michael Gallagher	District 10		x				

Attachment I

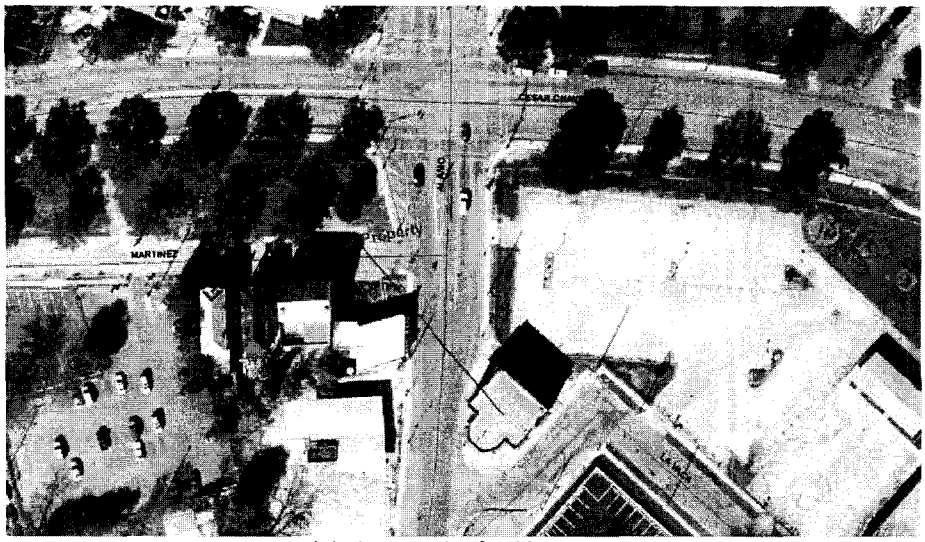


Site Map of Subject Property



Map of Subject Property

Exhibit "A"



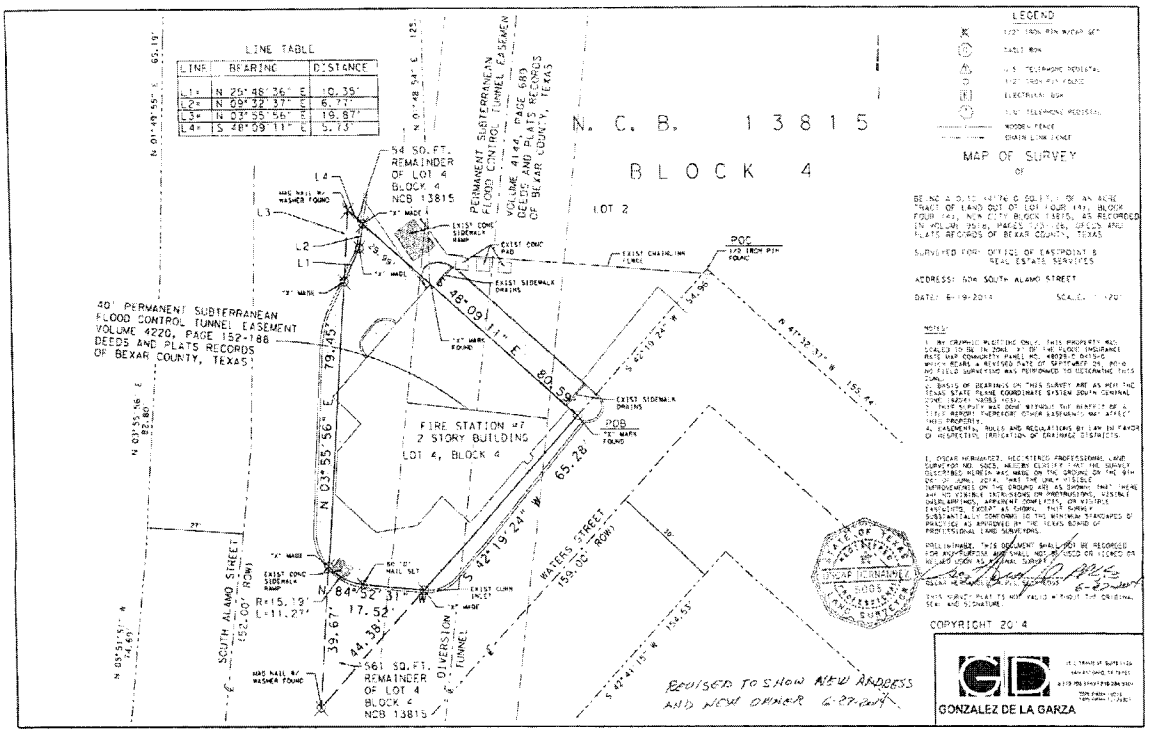
Aerial Photograph of Subject Property

Photograph of Subject Property

Exhibit "A"

Page 2 of 2

Attachment II



Attachment III

Real Estate Sales Contract

(604 South Alamo Street – Fire Station #7)

Table of Contents

1. Deadlines and Other Dates. 8
2. Closing Documents. 9
3. Exhibits. 9
4. Purchase and Sale of Property. 10
5. Earnest Money. 11
6. Title and Survey. 11
7. Inspection Period. 13
8. Representations. 14
9. Condition until Closing; No Recording of Contract. 14
10. Termination. 14
11. Closing. 15
12. Default and Remedies. 17
13. Prohibited Interests in Contracts. 18
14. Dispute Resolution. 18
15. Miscellaneous Provisions. 19
16. Public Information. 22
17. Brokers' Commission. 22
Title Company Acknowledgment and Receipt 24
Title Company Receipt for Earnest Money 25
Exhibit B 28
Exhibit C 31
Exhibit D: Form of Deed 32

Authorizing Ordinance:

Authority for Negotiated Sale: Local Government Code § 272.001

Seller: City of San Antonio

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

Address: Office of EastPoint and Real Estate, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Jesse Quesada)

Phone: 210-207-6971

Email: Jesse.Quesada@sanantonio.gov

Type of Entity: Texas municipal corporation

Seller's Counsel: Audrey Zamora

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

Buyer: Andrew Goodman

Address: 604 S. Alamo
San Antonio, Texas 78210

Phone: (210) 854-1234

Email: andrewgm@swbell.net

Type of Entity:

Buyer's Counsel: Stewart J. Alexander

Address: 8018 Broadway Street, Suite 101

Phone: 21-828-6777

Fax:

Email:

Property: Being 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), New City Block 13815, as recorded in volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas and more fully described in Exhibit A ("Land")

Title Company: Alamo Title Company

Address: 950 East Basse Road

Phone: 210-824-0264

Fax: 210-820-3971

Email: Toni.Altum@fnf.com

Title Company: Alamo Title Company

Purchase Price: $850,007.00

Earnest Money: $10,000.00

Surveyor: Gonzalez De La Garza

Survey Category: Category 1B

Effective Date: The later of (A the effective date of the Authorizing Ordinance and (B) the date a representative of the Title Company signs a receipt for this fully executed contract

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 federal or local holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or holiday. Time is of the essence.

1.01.	Earnest Money Deadline	10	Days after the Effective Date
1.02.	Delivery of Title Commitment	30	Days after the Effective Date
1.03.	Delivery of Survey	20	Days after Effective Date
1.04.	Delivery of legible copies of instruments referenced in the Title Commitment and Survey	10	Days after the Effective Date
1.05.	Delivery of Seller's records as specified in Exhibit C	10	Days after the Effective Date
1.06.	Buyer's Objection Deadline	20	Days after the receipt of Title Commitment and legible copies of instruments referenced in the Title Commitment, Survey
1.07.	Seller's Cure Notice Deadline	10	Days after Buyer's Objection Deadline
1.08.	Buyer's Termination Deadline	10	Days after Notice of Cure

		Deadline
1.09.	End of Inspection Period	180 Days after the Effective Date
1.10.	Closing Date	30 days after the Inspection Period
1.11.	Closing Time	10:00 A.M.

The deadlines may be altered by the mutual agreement of the parties. The Director of EastPoint and Real Estate Services may consent to such changes on behalf of Seller without further authorization of City Council.

2. Closing Documents.

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

Deed Without Warranty

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

Deceptive Trade Practices Act waiver

Purchase Price

2.03. The documents listed above are collectively known as the "Closing Documents."

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—Form of Deed

Exhibit D—Notice of Re-Entry

4. Purchase and Sale of Property.

4.01. Seller will sell and convey the Property to Buyer, and Buyer will buy and pay Seller for the Property. The promises by Buyer and Seller stated in this contract are the consideration for the formation of this contract.

4.02. The Property includes all improvements situated on it, together with all right, title, and interest of Seller, if any, in and to all appurtenances, strips or gores, roads, easements, streets, and rights-of-way bounding the Land; all utility capacity, water rights, licenses, permits, entitlements, and bonds, if any, and all other rights and benefits attributable to the Land; and all rights of ingress and egress thereto (collectively, the **"Additional Interests"**); except that the Additional Interests do not include, and Seller specifically reserves, such of the following interests as Seller holds by virtue of being a municipality as opposed to the owner of the fee-simple interest in the Property: utility easements, drainage easements, streets, alleys, and other rights-of-way dedicated for public use.

4.03. The deed from Seller to Buyer will have the following reservation:

> Not later than 180 days after Closing, Grantee must apply for all permits required for renovating the Property. Not later than 18 months after receipt of the permits, (a) Grantee must, other than for ordinary punch-list items, complete renovations costing at least $300,000 and (b) at least 50% of the primary building on the Property must be occupied.
>
> If Grantee fails to timely procure the permits, fails to timely substantially complete the renovations, or fails to timely have the building occupied by the requisite percentage, Grantor may at any time re-enter the Property and retake title to it by filing in the Bexar County real property records a Notice of Re-Entry. Grantor may also file the Notice of Re-Entry if Grantee fails to diligently pursue getting permits that are applied for. Upon Grantor's filing the Notice of Re-Entry, title automatically passes back from Grantee to Grantor. After filing the notice, Grantor may, but need not, move into possession of the Property and evict Grantee. Grantor's failure to move into possession or evict Grantee does not impair the effectiveness of filing the notice.
>
> As a condition of its right to file a Notice of Re-Entry, Grantor must tender to Grantor the Purchase Price under this contract within 30 days after filing the notice. A permissible way to tender the Purchase Price is to file a declaratory

judgment suit to affirm Grantor's title and to deposit the Purchase Price into the registry of the court.

If Grantor has not filed a Notice of Re-Entry by four years after Closing, its right to do so lapses, and Grantee's title is thereafter secure against any attempted re-entry by Grantor. No delay by Grantor in filing the notice short of the four years impairs its right to file the notice.

4.04. The Notice of Re-Entry must be substantially in the form attached as **Exhibit D**.

5. Earnest Money.

5.01. Buyer must deposit the Earnest Money with the Title Company no later than the Earnest Money Deadline.

5.02. 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.

5.03. Buyer must deliver the Earnest Money in immediately available funds to Title Company and obtain Title Company's signature before the Earnest Money Deadline for this contract to be effective. Immediately available funds are those available for use immediately upon receipt and do not include funds represented by a check or similar instrument that must clear the institution on which it is drawn.

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, as agent for Underwriter, 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. "Title Policy" means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by Buyer.

6.03. *Survey.*

6.03.01 "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.

6.03.02 If Seller does not object to the survey within 20 days after Buyer delivers it to Seller, the land subject to the survey automatically becomes the Land subject to this contract, and the field notes and plat of the survey automatically become Exhibit A to this agreement, whether or not physically attached.

6.04. *Delivery of Title Commitment, Survey.* Seller must deliver the Title Commitment and the Survey to Buyer by the deadlines stated in section 1.

6.05. *Buyer's Objections.* Buyer has until the Buyer's Objection Deadline to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Buyer's Objections"). Buyer will be deemed to have approved all matters reflected by the Survey and Title Commitment to which Buyer has made no Buyer's Objection by the Buyer's Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions."

6.06. If Buyer notifies Seller of any Buyer's Objections, Seller has until Seller's Cure Notice Deadline to notify Buyer whether Seller agrees to cure the Buyer's 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 Buyer's Objections before closing, Buyer may, on or before Buyer's Termination Deadline, 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 Buyer's Objections that Seller has agreed to cure in the Cure Notice.

6.07. 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 Buyer's Objections that Seller has agreed to cure. Before closing, Buyer agrees to conduct all due diligence investigations necessary for Buyer to proceed to closing in accordance with the terms of this agreement.

7. Inspection Period.

7.01. *Entry onto the Property.* Before closing, Buyer agrees to conduct all inspections necessary for Buyer to proceed to closing in accordance with the terms of this agreement. Buyer may enter the Property before closing to inspect it, subject to the following:

a. Buyer must deliver evidence to Seller that Buyer has insurance for its proposed inspection activities, in amounts and with coverages that are substantially the same as those maintained by Seller or in such lesser amounts or with such lesser coverages as are reasonably satisfactory to Seller;

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

c. Buyer must notify Seller in advance of Buyer's plans to conduct tests so that Seller may be present during the tests;

d. If the Property is altered because of Buyer's inspections, Buyer must return the Property to its preinspection condition promptly after the alteration occurs;

e. 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; and

f. Buyer must abide by any other reasonable entry rules imposed by Seller.

7.02. *Buyer's Right to Terminate.* Buyer may terminate this contract for any reason by notifying Seller before the end of the Inspection Period. The Independent Consideration is compensation to Seller for Buyer's right of cancellation and is not refundable under any circumstance.

7.03. *Buyer's Indemnity and Release of Seller*

a. *Indemnity.* Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except for repair or remediation of existing conditions discovered by Buyer's inspection.

b. *Release.* Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

8. 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.

9. Condition until Closing; No Recording of Contract.

9.01. *Maintenance and Operation.* Until closing, Seller will (a) maintain the Property as it existed on the Effective Date, except for reasonable wear and tear and casualty damage; (b) operate the Property in the same manner as it was operated on the Effective Date; and (c) comply with all contracts and governmental regulations affecting the Property.

9.02. *Casualty Damage.* Seller will notify Buyer promptly after discovery of any casualty damage to the Property. Seller will have no obligation to repair or replace the Property if it is damaged by casualty before closing. Buyer may terminate this contract if the casualty damage that occurs before closing would materially affect Buyer's intended use of the Property, by giving notice to Seller within 15 days after receipt of Seller's notice of the casualty (or before closing if Seller's notice of the casualty is received less than fifteen days before closing). If Buyer does not terminate this contract, Seller will convey the Property to Buyer in its damaged condition.

9.03. *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 15 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.

9.04. *No Recording.* Buyer may not file this contract or any memorandum or notice of this contract in the real property records of any county. If, however, Buyer records this contract or a memorandum or notice, Seller may terminate this contract and record a notice of termination.

10. Termination.

10.01. *Disposition of Earnest Money after Termination*

a *To Buyer.* 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.

b. *To Seller.* 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.

10.02. *Duties after Termination.* If this contract is terminated, Buyer will promptly return to Seller all documents relating to the Property that Seller has delivered to Buyer and all copies that Buyer has made of the documents. After return of the documents and copies, neither party will have further duties or obligations to the other under this contract, except for those obligations that cannot be or were not performed before termination of this contract.

11. Closing.

11.01. *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.

e. Buyer need not close if Seller cannot or does not deliver indefeasible title at closing. If Buyer does not close for want of indefeasible title, the earnest money is returned to Buyer.

11.02. *Transaction Costs.*

a. Buyer will pay:

i. the basic charge for the Title Policy;

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

iii. the costs to prepare the deed;

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 the "survey/area and boundary deletion" in the Title Policy

vii. the costs to obtain the Survey and certificates or reports of ad valorem taxes;

viii. the costs to deliver copies of the instruments described in article 1; and

ix. Buyer's expenses and attorney's fees.

b. Seller will pay:

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

ii. the costs to obtain, deliver, and record all documents other than those to be recorded at Seller's expense;

iii. Seller's expenses and attorney's fees.

c. *Ad Valorem Taxes.* Property owned by Seller is exempt under Texas Property Tax Code § 11.11. At closing property taxes will be prorated according to Texas Tax Code § 26.10. Seller assumes no responsibility for ad valorem taxes for any period, rollback or otherwise, not otherwise imposed on it by law.

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.

12. Default and Remedies.

12.01. *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.* Buyer may terminate this contract by giving notice to Seller on or before the expiration of the Inspection Period and have the Earnest Money returned to Buyer.

12.02. *Buyer's Default.* If Buyer fails to perform any of its obligations under this contract ("Buyer's Default"), Seller may elect either of the following as its sole and exclusive remedy:

a. *Termination.* Seller may 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. If Buyer's Default occurs after Seller has incurred costs to perform its obligations under this contract and Seller terminates this contract in accordance with the previous sentence, Buyer will also reimburse Seller for the lesser of Seller's actual out-of-pocket expenses incurred to perform its obligations under this contract within 10 days of Buyer's receipt of an invoice from Seller stating the amount of Seller's expenses.

b. *Specific Performance.* Seller may enforce specific performance of Buyer'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. Prohibited Interests in Contracts.

13.01 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.

13.02 Buyer warrants and certifies as follows:

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

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

13.03 Contractor acknowledges that City's reliance on the above warranties and certifications is reasonable.

14. Dispute Resolution.

14.01 As a condition precedent to bringing any action arising out of or relating to this agreement or any aspect thereof, 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.

14.02. Filing suit on a claim that should be mediated hereunder 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.

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

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

14.05 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.

14.06 Mediator fees must be borne equally.

14.07. The parties need not mediate before going to court for either party to seek emergency injunctive relief.

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 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. 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, such determination does not affect the remainder hereof.

15.03 *Successors.* This Agreement inures to the benefit of and is binding on 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.*

15.05.01. 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.

15.05.02 The Director of Capital Improvement Management Services may, without further action of City Council, agree on behalf of Seller to extensions of deadlines or other non-material modifications to the rights and obligations of the parties under this Agreement.

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 use certified mail does not defeat the effectiveness of notice actually received, but such notice is given only upon 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 *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 the number of counterparts, they 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.

15.11 *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, shall alter the rights or obligations of the parties as contained in this agreement

15.12. *Assignment.* With Seller's consent, which is not to be unreasonably withheld, Buyer may assign this contract and Buyer's rights under it only to an entity in which Buyer can, directly or indirectly, direct or cause the direction of its management and policies, whether through the ownership of voting securities or otherwise. Any other assignment is void.

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

15.14. *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.

15.15. *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.

15.16 *Confidentiality.* The parties will keep confidential this contract, this transaction, and all information learned in the course of this transaction, except to the extent disclosure is required by law or court order or to enable third parties to advise or assist Buyer to investigate the Property or either party to close this transaction.

15.17 *Waiver of Consumer Rights.* **Buyer Waives Its Rights Under The Texas Deceptive Trade Practices-Consumer Protection Act, Section 17.41 *et seq.* of The Texas Business and Commerce Code, A Law That Gives Consumers Special Rights and Protections. After Consultation With an Attorney of Its Own Selection, Buyer Voluntarily Consents To This Waiver.**

15.18. *Incorporation by Reference.* All exhibits to this Agreement are incorporated into it by reference for all purposes as if fully set forth.

15.19. *Replatting.* Buyer acknowledges that the Property has been subdivided without replatting. The law requires replatting, and Buyer assumes that obligation.

15.20. *Administrative Agreements.* The Director of EastPoint and Real Estate Services ("EastPoint") and the Assistant Director for EastPoint may, without further council action, agree to, sign, and deliver on behalf of the City all consents, certificates, memoranda, estoppels, and modifications of nonmaterial rights and obligations arising under this agreement and may declare defaults and pursue remedies for such defaults.

16. Public Information.

Buyer 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. Nothing in this agreement waives an otherwise applicable exception to disclosure.

17. Brokers' Commission.

Seller must pay a commission according to an agreement between Seller and Seller's Broker. The commission will be divided between Seller's Broker and Buyer's broker according to an agreement between them. Each party represents to the other that no other commissions are due in respect of this transaction. In case of a dispute over the amount or allocation of the commission, the Title Company may nevertheless close the transaction and deliver the deed to Buyer, holding open only the distribution of proceeds to Seller.

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

Seller:	**Buyer:**
City of San Antonio, a Texas municipal corporation	Andrew Goodman
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Title Company Acknowledgment and Receipt

Seller: City of San Antonio

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

Buyer: Andrew Goodman

Address: 1024 S. Alamo
San Antonio, Texas 78210

Property: Being 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), New City Block 13815, as recorded in volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas and more fully described in Exhibit A ("Land")

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.

Alamo Title Company

By:_____

Printed
Name:_____

Title:_____

Date:_____

Title Company Receipt for Earnest Money

Seller: City of San Antonio

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

Buyer: Andrew Goodman

Address: 1024 S. Alamo
San Antonio, Texas 78210

Property: Being 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), New City Block 13815, as recorded in volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas and more fully described in Exhibit A ("Land")

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

Amount: _____

Alamo Title Company

By:_____

Printed
Name:_____

Title:_____

Date:_____

EXHIBIT A

GONZALEZ DE LA GARZA

LEGAL DESCRIPTION

Being a 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), NEW CITY BLOCK 13815, as recorded in Volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas, said 0.10 of an acre tract of being more particularly described as follows:

COMMENCING, at a ½ inch Iron Rod found at the intersection of the North right of way line of Lavaca Street (having 55.0' ROW) and the West right of way line of Waters Street (having a 55.0' ROW). THENCE,, South 42 degrees 29 minutes 24 seconds West, along the West right of way of said Waters Street a distance of 84.96 feet to an "X" Mark found for the Northeast corner and POINT OF BEGINNING of the tract herein described;

THENCE,, S 42°19'24" W, continuing along the West right of way of said Waters Street a distance of 65.28 feet to a "X" Mark Made at the intersection of the West right of way of said Waters Street and the Back of Curb for the Southeast corner of the tract herein described.

THENCE, N 84°52'31" W, along the Back Of Curb a distance of 17.52 feet to a 60"D" set at the Point of Convature of a curve to the right for an angle point of the tract herein described;

THENCE, along the Back of Curb with said curve to the right having an arc length of 11.27 feet, a radius of 13.19 feet, a chord bearing of N 62°12'26" W, with a chord length of 11.20 feet, to a "X" Mark Made at the point of intersection of the East right of way line of Alamo Street (having varied R.O.W.) for the Southwest corner of the tract herein described.

THENCE,, N 05°55'56" E, along the East right of way line of said Alamo Street a distance of 79.45 feet to a "X" Mark Made intersection of the East right of way line of said Alamo Street and the East Back of Curb of said Alamo Street for an angle point of the tract herein described;

THENCE, N 25°48'36" E, leaving the East right of way line of said Alamo Street and along the East Back of Curb of said Alamo Street a distance of 10.35 feet a "X" Mark Made for an angle point of the tract herein described.

THENCE, N 09°32'27" E, along the East Back of Curb of said Alamo Street a distance of 6.77 feet to a "X" Mark Made at the intersection of the East Back of Curb of said Alamo Street and the common line between Lot 2 and Lot 4, Block 4, N.C.B. 13815, for the Northwest corner of the tract herein described;

THENCE,, S 48°09'11" E, along the common line between Lot 2, and Lot 4, Block 4, N.C.B. a distance of 24.24 feet to an "X" Mark found and continuing to a total distance of 80.58 feet to the POINT OF BEGINNING.
CONTAINING: an area of 4177 square feet, 0.10 acres OF LAND MORE OR LESS

BASIS OF BEARINGS ON THIS SURVEY ARE AS PER THE TEXAS STATE PLANE COORDINATE SYSTEM - SOUTH CENTRAL ZONE (4204) NAD83 (CS)

STATE OF TEXAS REGISTERED PROFESSIONAL LAND SURVEYOR 5005

Oscar Hernandez, RPLS.
R.P.L.S. Number 5005
REVISED: 6-25-2014

115 East Travis St. Suite 1120 Milam Building San Antonio, Tx 78205
Offe. 210-208-9400 Fax#: 210-208-9401

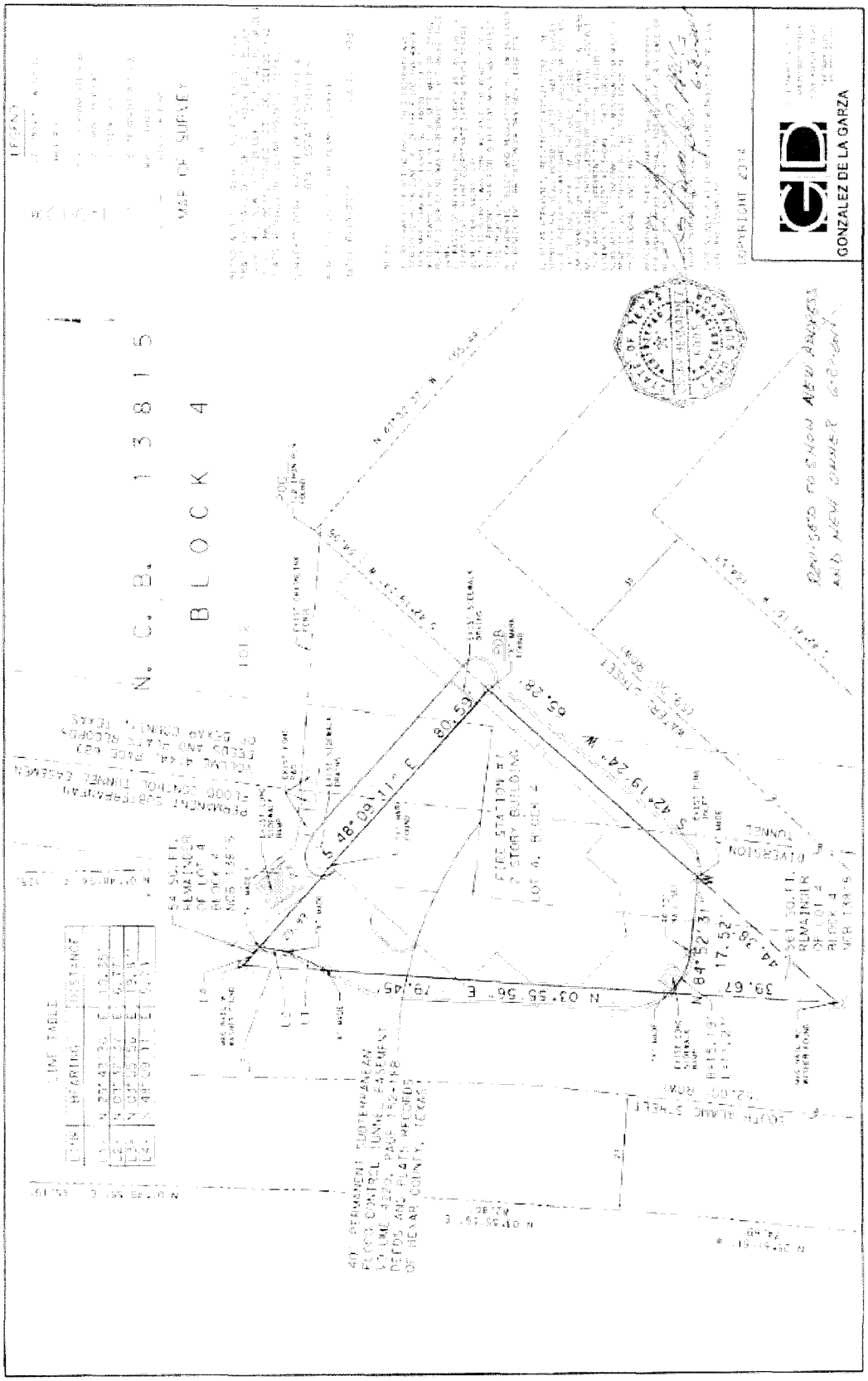

N. C. B. 13815
BLOCK 4
MAP OF SURVEY
GONZALEZ DE LA GARZA
COPYRIGHT 2014
LINE TABLE
S 48° 09' 11" E 80.53'
S 42° 19' 24" W 65.28'
N 03° 55' 56" E 79.46'
N 84° 32' 31" W 17.52'
39.67'
FIRE STATION #2
2 STORY BUILDING
LOT A, BLOCK 2
PERMANENT SUBTERRANEAN
FLOOD CONTROL TUNNEL EASEMENT
VOLUME 4224, PAGE 1522-1528
DEED AND PLATS RECORDS
OF BEXAR COUNTY, TEXAS
PROPOSED POSTAL AREA ADDRESS
AND NEW OWNER

Exhibit B

Representations; Environmental Matters

A. Seller's Representations to Buyer

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 municipal 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. *Licenses, Permits, and Approvals.* Seller has not received notice that any license, permit, or approval necessary to operate the Property in the manner in which it is currently operated will not be renewed on expiration or that any material condition will be imposed in order to obtain their renewal.

5. *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.

6. *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.

7. *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. *No Other Representation.* Except as stated above or in the notices, statements, and certificates set forth in Exhibit D, Seller makes no representation with respect to the Property.

9. *No Warranty.* Seller has made no warranty in connection with this contract.

B. "As Is, Where Is"

This Contract Is An Arms-Length Agreement Between The Parties. The Purchase Price Was Bargained On The Basis Of An "As Is, Where Is" Transaction And Reflects The Agreement Of The Parties That There Are No Representations, Disclosures, Or Express Or Implied Warranties, Except For The Warranty Of Title Stated In The Closing Documents And Seller's Representations To Buyer Set Forth In Section A Of This Exhibit B.

The Property Will Be Conveyed To Buyer In An "As Is, Where Is" Condition, With All Faults. [Include If Applicable: Seller Makes No Warranty Of Condition, Merchantability, Or Suitability Or Fitness For A Particular Purpose With Respect To The Personal Property.] All Warranties, Except The Warranty Of Title In The Closing Documents, Are Disclaimed.

The provisions of this section B regarding the Property will be included in the deed [**include if applicable:** and bill of sale] with appropriate modification of terms as the context requires.

C. Environmental Matters

After Closing, As Between Buyer And Seller, The Risk Of Liability Or Expense For Environmental Problems, Even If Arising From Events Before Closing, Will Be The Sole Responsibility Of Buyer, Regardless Of Whether The Environmental Problems Were Known Or Unknown At Closing. Once Closing Has Occurred, Buyer Indemnifies, Holds Harmless, And Releases Seller From Liability For Any Latent Defects And From Any Liability For Environmental Problems Affecting The Property, Including Liability Under The Comprehensive Environmental Response, Compensation, And Liability Act (Cercla), The Resource Conservation And Recovery Act (Rcra), The Texas Solid Waste Disposal Act, Or The Texas Water Code. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Seller's Own Negligence Or The Negligence Of Seller's Representatives. Buyer Indemnifies, Holds Harmless, And Releases Seller From Any Liability For Environmental Problems Affecting The Property Arising As The Result Of Theories Of Products Liability

And Strict Liability, Or Under New Laws Or Changes To Existing Laws Enacted After The Effective Date That Would Otherwise Impose On Sellers In This Type Of Transaction New Liabilities For Environmental Problems Affecting The Property.

The provisions of this section C regarding the Property will be included in the deed with appropriate modification of terms as the context requires.

D. Buyer's Representations to Seller

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

1. *Authority.* Buyer has authority and ability to acquire the Property from Seller. This contract is, and all documents required by this contract to be executed and delivered to Seller at closing will be, duly authorized, executed, and delivered by Seller.

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

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: Form of Deed

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.

State of Texas }
}
County of Bexar }

Deed Without Warranty

Authorizing Ordinance:	
Statutory Authority:	Local Government Code § 272.001(a)
SP No./Parcel:	
Grantor:	City of San Antonio
Grantor's Mailing Address:	City Of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966 (Attn: City Clerk)
Grantor's Street Address:	City Hall, 100 Military Plaza, San Antonio, Texas 78205 (Bexar County)
Grantee:	Andrew Goodman
Grantee's Mailing Address:	1024 S. Alamo San Antonio, Texas 78210
Consideration:	$850,007.00
Property:	All of the following real property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, being described as follows: Being 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), New City Block 13815, as recorded in volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas and more fully described in Exhibit A ("Land") and more particularly described by

metes and bounds and shown by survey on **Exhibit "A"** attached hereto and incorporated herein verbatim for all purposes.

Grantor, for the Consideration, Grants, Bargains, and Conveys to Grantee, all of Grantor's right, title, interest, and estate, both at law and in equity, as of the date hereof, in and to the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, To Have and To Hold unto Grantee, Grantee's successors and assigns forever, **Without Any Express Or Implied Warranty Whatsoever, Including But Not Limited to Warranties of Title, Condition, or Character.**

The Property is conveyed together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties herein.

Reservations, Restrictions, Exceptions, And Conditions To Conveyance: This conveyance is explicitly subject to the following:

A. Reservations: Not later than 180 days after Closing, Grantee must apply for all permits required for renovating the Property. Not later than 18 months after receipt of the permits, (a) Grantee must, other than for ordinary punch-list items, complete renovations costing at least $300,000 and (b) at least 50% of the primary building on the Property must be occupied.

If Grantee fails to timely procure the permits, fails to timely substantially complete the renovations, or fails to timely have the building occupied by the requisite percentage, Grantor may at any time re-enter the Property and retake title to it by filing in the Bexar County real property records a Notice of Re-Entry. Grantor may also file the Notice of Re-Entry if Grantee fails to diligently pursue getting permits that are applied for. Upon Grantor's filing the Notice of Re-Entry, title automatically passes back from Grantee to Grantor. After filing the notice, Grantor may, but need not, move into possession of the Property and evict Grantee. Grantor's failure to move into possession or evict Grantee does not impair the effectiveness of filing the notice.

As a condition of its right to file a Notice of Re-Entry, Grantor must tender to Grantor the Purchase Price under this contract within 30 days after filing the notice. A permissible way to tender the Purchase Price is to file a declaratory judgment suit to affirm Grantor's title and to deposit the Purchase Price into the registry of the court.

If Grantor has not filed a Notice of Re-Entry by four years after Closing, its right to do so lapses, and Grantee's title is thereafter secure against any attempted re-entry by Grantor. No delay by Grantor in filing the notice short of the four years impairs its right to file the notice.

B. Easements: All recorded and unrecorded easements, whether or not open and obvious.

C. Restrictions: All covenants and restrictions affecting the Property.

D. Exceptions: All instruments affecting the Property, whether or not recorded.

E. Conditions: All conditions affecting the Property.

This conveyance does not relieve Grantee of any building, zoning, or other city-imposed requirements, or other land use restrictions applicable to the Property or the obligation to pay any real estate taxes that may otherwise be due.

Grantor expressly disclaims any and all warranties arising by common law, statute (including without limitation the implied warranties of § 5.023, Texas Property Code or any successor statute), or otherwise.

Setting Out The Specific Reservations And Disclaimers Does Not Imply That The Property Is Free Of Other Encumbrances Or Adverse Claims Or Conditions. Grantor Specifically Disclaims Any Such Implication.

In Witness Whereof, Grantor has caused its representative to set its hand:

Grantor:

City of San Antonio, a Texas municipal corporation

By:_____

Printed Name:_____

Title:_____

Date:_____

Draft. This is only to show the agreed form of the final document. This draft is neither ready nor suitable to be signed.

Approved As To Form:

By:_____
City Attorney

The State of Texas }

County of Bexar }

Before me, the undersigned authority, this instrument was this day acknowledged by _____, of and for the City of San Antonio, a Texas municipal corporation, on behalf of that entity in the capacity stated.

Date:_____

_____
Notary Public, State of Texas

My Commission Expires:_____

After Recording, Return To:

_____

_____

_____

DEED EXHIBIT A

GONZALEZ DE LA GARZA

LEGAL DESCRIPTION

Being a 0.10 of an acre tract of land known as Lot Four (4), Block Four (4), NEW CITY BLOCK 13815, as recorded in Volume 9518, Pages 123-126, Deeds and Plats Records of Bexar County, Texas; said 0.10 of an acre tract of being more particularly described as follows:

COMMENCING, at a ½ inch Iron Rod found at the intersection of the North right of way line of Lavaca Street (having 55.0' ROW) and the West right of way line of Waters Street (having a 55.0' ROW); THENCE,, South 42 degrees 19 minutes 24 seconds West, along the West right of way of said Waters Street a distance of 54.96 feet to an "X" Mark found for the Northeast corner and POINT OF BEGINNING of the tract herein described;

THENCE,, S 42°19'24" W, continuing along the West right of way of said Waters Street a distance of 65.28 feet to a "X" Mark Made at the intersection of the West right of way of said Waters Street and the Back of Curb for the Southeast corner of the tract herein described

THENCE, N 84°52'31" W, along the Back Of Curb a distance of 17.52 feet to a 60"D" set at the Point of Curvature of a curve to the right for an angle point of the tract herein described;

THENCE, along the Back of Curb with said curve to the right having an arc length of 11.27 feet, a radius of 15.19 feet, a chord bearing of N 82°12'05" W, with a chord length of 11.20 feet, to a "X" Mark Made at the point of intersection of the East right of way line of Alamo Street (having varied R.O.W.) for the Southwest corner of the tract herein described;

THENCE,, N 08°55'56" E, along the East right of way line of said Alamo Street a distance of 79.45 feet to a "X" Mark Made intersection of the East right of way line of said Alamo Street and the East Back of Curb of said Alamo Street for an angle point of the tract herein described;

THENCE, N 25°48'36" E, leaving the East right of way line of said Alamo Street and along the East Back of Curb of said Alamo Street a distance of 10.35 feet a "X" Mark Made for an angle point of the tract herein described

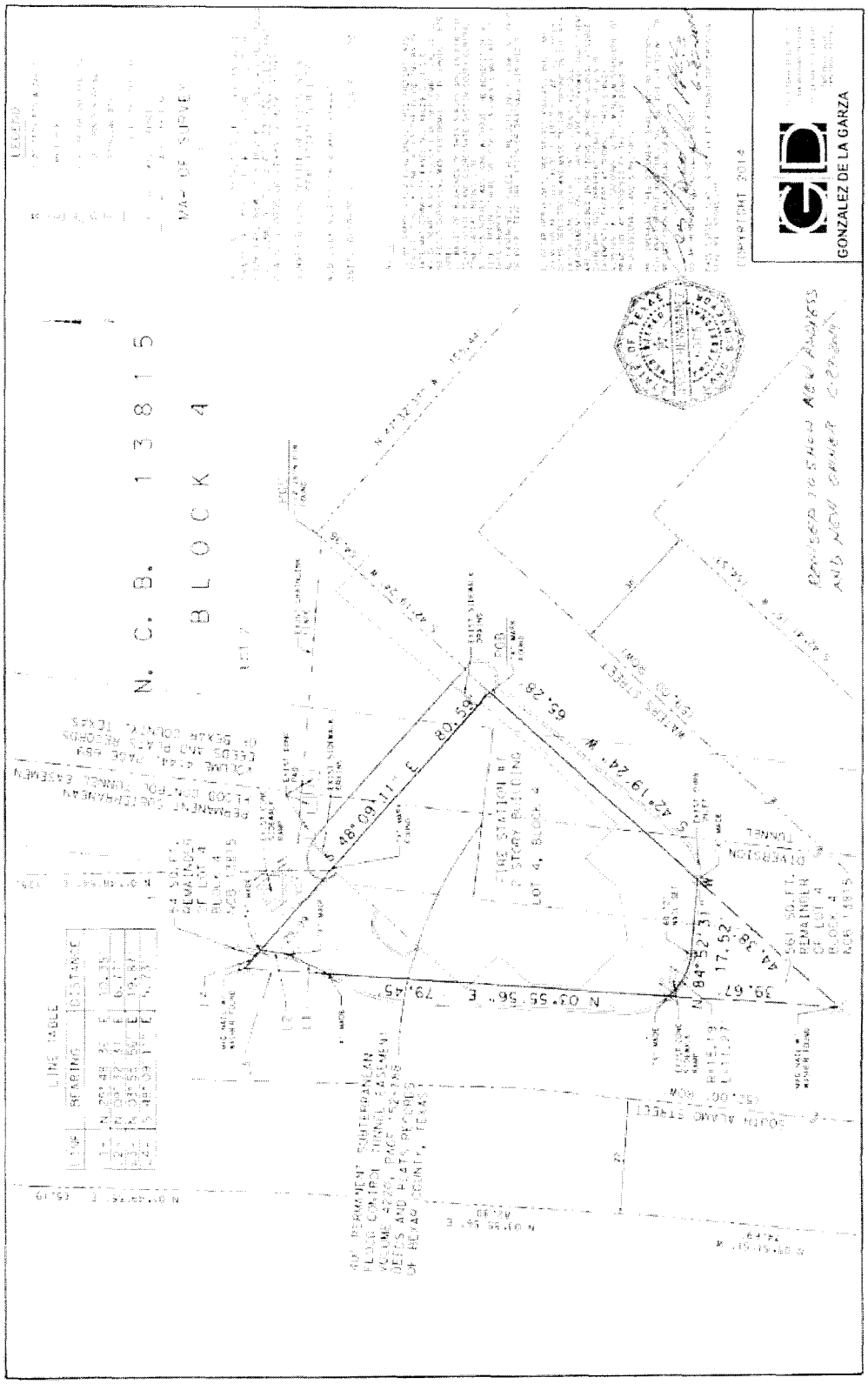
THENCE, N 09°32'37" E, along the East Back of Curb of said Alamo Street a distance of 6.77 feet to a "X" Mark Made at the intersection of the East Back of Curb of said Alamo Street and the common line between Lot 2 and Lot 4, Block 4, N.C.B. 13815, for the Northwest corner of the tract herein described;

THENCE,, S 48°09'11" E, along the common line between Lot 2, and Lot 4, Block 4, N.C.B. a distance of 24.24 feet to an "X" Mark found and continuing to a total distance of 80.59 feet to the POINT OF BEGINNING
CONTAINING; an area of 4177 square feet, 0.10 acres OF LAND MORE OR LESS.

BASIS OF BEARINGS ON THIS SURVEY ARE AS PER THE TEXAS STATE PLANE COORDINATE SYSTEM – SOUTH CENTRAL ZONE (4204) NAD83 (CS)

Oscar Hernandez, R.P.L.S.
R.P.L.S. Number 5005
REVISED 6-25-2014

115 East Travis St. Suite 1120 Milam Building San Antonio, Tx 78205
Off#: 210-208-9400 Fax#: 210-208-9401


N. C. B. 13815
BLOCK 4
LEGEND
MAP OF SURVEY
LINE TABLE
BEARING
DISTANCE
S 48° 09' 11" E 80.59'
S 42° 19' 24" W 65.28'
N 03° 55' 56" E 79.45'
N 84° 52' 31" W 17.52'
39.67'
LOT 4, BLOCK 4
FINE STATION BY
2 STORY BUILDING
PERMANENT SUBTERRANEAN
FLOOD CONTROL TUNNEL EASEMENT
VOLUME 4224, PAGE 489
DEED AND PLATS RECORDS
BEXAR COUNTY, TEXAS
SOUTH ALAMO STREET
DIVERSION
TUNNEL
BASED TO STATE NEW DATUM
AND NEW GRID
COPYRIGHT 2014
GONZALEZ DE LA GARZA

Attachment IV

STATE OF TEXAS §
§ **FUNDING AGREEMENT**
COUNTY OF BEXAR §

This Agreement (the "Agreement") is hereby made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "City"), a Texas home rule municipal corporation, acting by and through its City Manager or her designee pursuant to Ordinance No. 2014-09-04-____ dated September 4, 2014, and **THE SAN ANTONIO FIRE MUSEUM SOCIETY**, a Texas Nonprofit corporation (hereinafter referred to as "Grantee"), , acting by and through its President/CEO, hereto duly authorized. The City and Grantee are sometimes hereafter collectively referred to as the "Parties".

WHEREAS, Grantee owns and operates the San Antonio Fire Museum ("Museum"), which is located at 801 E. Houston Street, in San Antonio; and

WHEREAS, the site of the Museum is also the site of the former "Central Fire Headquarters" or Fire Station #1 when it was occupied and utilized by the San Antonio Fire Department ("SAFD"); and

WHEREAS, among the items owned by Grantee and on display in the Museum are antique fire apparatus, artifacts dating back to the mid-1800s, and archived documents and photos; and

WHEREAS, the Museum is a valuable mechanism and resource through which the history of the SAFD can be preserved and displayed for the enjoyment and education of citizens of the City; and

WHEREAS, Grantee relies heavily on private donations to fund its ownership and maintenance of the Museum and its acquisition of additional items to be displayed in the Museum; and

WHEREAS, the City has determined that it is a valid and proper municipal purpose to donate funds to Grantee to be utilized by Grantee in its **(1)** ownership, maintenance and operation of the Museum; **(2)** acquisition and display of items related to the preservation of the history of the SAFD at the Museum; and **(3)** preservation of the history of the SAFD; and

WHEREAS, an additional public benefit to be gained from the donation of City funds to Grantee to be utilized in the manner described above is the provision of cultural facilities, operated under non-profit regulations, available for the citizens of San Antonio; and

WHEREAS, the Parties desire to provide terms and conditions under which the City shall

donate funds to Grantee and also provide for the use of such funds by Grantee;

NOW THEREFORE, the Parties severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of herein.

I. TERM

1.01 The term of this Agreement shall commence on September 8, 2014 ("Effective Date") and continue until the first to occur of (1) donation by the City of the total sum of $150,000.00 to Grantee, or (2) the passage of eighteen months after the Effective Date.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in Section 5.01 of this Agreement, Grantee hereby accepts full responsibility for the performance of all obligations and undertakings to be performed by it under this Agreement.

2.02 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President/CEO shall be Grantee's designated representative responsible for the management of this Agreement.

2.03. The Fire Chief of the City or his designee shall be responsible for the administration of this Agreement on behalf of the City.

2.04 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.02 and 2.03 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

Small/Minority and Woman Owned Business Terms and Conditions are attached hereto as Exhibit A.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby and agrees that the operating hours of the Museum will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Museum. Further, Grantee shall not employ, nor allow under Grantee's control others to

employ, discriminatory practices in the use of the Museum. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

4.02 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The funds donated by City to Grantee pursuant to this Agreement shall be expended by Grantee solely for the accomplishment of any purpose(s) directly related to the Museum for which Grantee can expend its funds under the provisions of its governance documents and all applicable federal and State statutes, rules, regulations and guidelines.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall donate a total sum not to exceed $150,000.00 to Grantee during the term of this Agreement,.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.

5.03 The initial disbursement of funds to Grantee shall be in the amount of the ending balance on deposit in Grantee's bank account ("Account") as reflected in the most recent bank statement for the Account received by Grantee prior to the Effective Date. The Parties estimate the amount of this initial disbursement to be $30,000.00. Grantee shall provide a copy of that bank statement to City (with any redactions approved in advance by City). The disbursement shall be made by City within fifteen (15) days following its receipt of that bank statement.

5.04 Subsequent disbursement of funds to Grantee shall be in the minimum amount of $10,000.00 each

5.05 Grantee shall submit a written Request For Disbursement ("Request") to City for each subsequent disbursement. The Request shall be accompanied by (1) a sworn (by Grantee/s President/CEO or Treasurer) income statement reflecting revenues and expenditures from Grantee's operation of the Museum and related activities (if any) for the period beginning with the date of the last disbursement and ending with the business day immediately preceding the date of the Request and (2) a copy of each bank statement for the Account received by Grantee from the date of the last disbursement to the through the business day immediately preceding the date of the Request.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement.

VII. RESERVED

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

(A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant adverse change without written notice to City.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material adverse change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS

9.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it will cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

X. MONITORING AND EVALUATION

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and to ensure Grantee's compliance with all applicable laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

11.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT Grantee AND City ARE FOUND JOINTL Y LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARA TIVEL Y IN ACCORDANCE WITH THE LAWS FOR THE STA TE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE City UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

11.03 **TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.**

XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Fire Department, which shall be clearly labeled, "San Antonio Fire Museum" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Fire Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

12.03 Grantee's financial integrity is of interest to the City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an

A.M Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Workers Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
*If applicable	

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 12.03 (Insurance table) from each vendor contracted by Grantee to perform work for the Project, unless the City agrees in writing to a variance in such minimum requirements and provide a Certificate of Insurance and Endorsement that names the Grantee and the City as an additional insured.

12.05 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Fire Department
Office of the Fire Chief
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 Grantee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

12.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

12.08 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its general construction contractor's or subcontractors' performance of the work covered under this Agreement.

12.09 It is agreed that Grantee's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

12.10 It is understood and agreed that the insurance required is In addition to and separate from any other obligation contained in this Agreement.

12.11 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction) .

XIII. NONDISCRIMINATION

13.01 Grantee covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which said discrimination Grantee acknowledges is prohibited.

XIV. CONFLICT OF INTEREST

14.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

14.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

(A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XV. POLITICAL ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVI. RESERVED

XVII. RESERVED

XVIII. CHANGES AND AMENDMENTS

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement

and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein

contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

21.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XXII. ENTIRE AGREEMENT

22.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXIII. NOTICES

23.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Fire Chief of the City of San Antonio P.O. Box 839966 San Antonio TX 78283-3966

Grantee: The San Antonio Fire Museum Society 801 E. Houston Street San Antonio TX 78205-2024

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXIV. PARTIES BOUND

24.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXV. RELATIONSHIP OF PARTIES

25.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXVI. TEXAS LAW TO APPLY

26.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

XXVII. GENDER

27.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVIII. CAPTIONS

28.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIX. DEFAULT

29.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

29.02 Upon default by City in the performance of its obligations hereunder Grantee shall give City notice of the same and City shall have thirty (30) days following receipt of written notice of default from Grantee (or such reasonably longer time as may be necessary provided City commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If City fails to timely cure such default,

Grantee may pursue all remedies available in law or equity and/or other rights Grantee may have in this Agreement, subject to the limitations set forth in Section 30.01.

XXX. LEGAL AUTHORITY

30.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

30.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the _____ day of _____, 2014.

CITY OF SAN ANTONIO

By: _____

APPROVED AS TO FORM:

_____
CITY ATTORNEY

THE SAN ANTONIO FIRE MUSEUM SOCIETY

By: _____
Bob Heckman, President/CEO

Exhibit A

FUNDING AGREEMENT

SAN ANTONIO FIRE MUSEUM SOCIETY

I. SBEDA Ordinance Compliance Provisions

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Contract Requirements and Commitment

Grantee understands and agrees that the following provisions shall be requirements of this contract, and by its execution, Grantee commits to comply with these requirements. **In** the absence of a waiver granted by the SBO, failure of Grantee to commit, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization Plan form, to satisfying the SBE and M/WBE subcontracting goals shall constitute default.

Waiver Request -A Grantee may request, for good cause, a **full** or partial Waiver of a **specified subcontracting goal** included in this contract by submitting the *Vendor Subcontracting Waiver Request* form *(which is available at* http://www.sanantonio.gov/SBO/Forms.aspx). The Grantee's Waiver request must fully document subcontractor unavailability despite the Grantee's good faith efforts to comply with the goals. Such documentation shall include all good faith efforts made by Grantee including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact.

C. Definitions

Affirmative Procurement Initiatives (API) -Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals

and joint venture incentives. (For **full** descriptions of these and other S/M/WBE program tools, see Section **III.** D. of Attachment A to the SBEDA Ordinance.)

Centralized Vendor Registration System (CVR) -a mandatory electronic system wherein the City requires illl prospective firms that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability

and tracking utilization of SBE and *M/WBE* firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Certification or "Certified" -the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function -an *S/M/WBE* firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the *S/M/WBE* firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an *S/M/WBE* firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the *S/M/WBE* firm is to be paid under the contract is commensurate with the work it is actually performing and the *S/M/WBE* credit claimed for its performance of the work, and other relevant factors. Specifically, an *S/M/WBE* firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful *S/M/WBE* participation, when in similar transactions in which *S/M/WBE* firms do not participate, there is no such role performed. The use of *S/M/WBE* firms by Grantee to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if Grantee attempts to obtain credit for such *S/M/WBE* participation towards the satisfaction of *S/M/WBE* participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the *S/M/WBE* firm, the Grantee shall not be given credit for the participation of its *S/M/WBE* subcontractor or joint venture partner towards attainment of *S/M/WBE* utilization goals, and the Grantee and *S/M/WBE* firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts -documentation of the Grantee's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Grantee's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the

Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Grantee; and documentation of consultations with trade associations and consultants that represent the interests of SBE *and/or* M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Grantee's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm -a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (I) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated - ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual - an adult person that is of legal majority age.

Industry Categories - procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) - firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory - a listing of minority-and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) -any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51 %) owned, managed and controlled by one or more Minority

Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members -African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

> African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.
>
> Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.
>
> Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than I /16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department -the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment - dollars actually paid to Grantees and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor - the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the Grantee.

Relevant Marketplace - the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Responsible -a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive -a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) -also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory -a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program -an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage ofthe value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by Grantee may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of

subcontracting goals for SBE firms.

Significant Business Presence -to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) -a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) -the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager -the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/MIWBE Program) -the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor - any vendor or contractor that is providing goods or services to a Prime Contractor or Grantee in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the Grantee and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension - the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Grantee's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan -a binding part of this contract Agreement which states the Grantee's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name,

scope of work, and dollar value of work to be performed by each of Grantee's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

Women Business Enterprises (WBEs) -any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small

Business Enterprise and that is at least fifty-one percent (51 %) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance -General Provisions

As Grantee acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of Grantee's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Grantee voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, Grantee further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1 Grantee shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding Grantee's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2 Grantee shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Grantee or its Subcontractors or suppliers;

3 Grantee shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4 Grantee shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Grantee's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Grantee to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Grantee of work previously

designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. Grantee shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. Grantee shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Grantee's Subcontractor / Supplier Utilization Plan, the Grantee shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Grantee and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. Grantee acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the Grantee and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and Grantee has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

E. SBEDA Program Compliance -Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. I. (c), this contract is being awarded pursuant to the SBE Subcontracting Program. Grantee agrees to subcontract at least ***forty pecent (40%)*** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Grantee submitted to the CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by Grantee on this contract, the respective percentages of the

total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement, and,

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 2. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Grantee agrees to subcontract at least ***thirty percent (30%)*** of its prime contract value to certified S/M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Grantee submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Grantee on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each S/M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, the failure of Grantee to attain these subcontracting goals for SBE or M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE or M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

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

G. Prompt Payment

Upon execution of this contract by Grantee, Grantee shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Grantee's reported subcontract participation is accurate. Grantee shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the"Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of Grantee's noncompliance with these prompt payment provisions, no final retain age on the Prime Contract shall be released to Grantee, and no new CITY contracts shall be issued to the Grantee until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

E. Violations, Sanctions and Penalties

In addition to the above terms, Grantee acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, *M/WBE,* HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an *S/M/WBE* or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an *S/M/WBE* for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to *S/M/WBE* Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of Grantee or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).