

AN ORDINANCE 2007 - 04 - 05 - 0359

AUTHORIZING ACQUISITION OF A CONSERVATION EASEMENT OVER MORE THAN 13,000 ACRES OF EDWARDS RECHARGE ZONE PROPERTY IN UVALDE COUNTY FOR UP TO \$8,184,450.00 AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE UPON 3/4 CITY COUNCIL APPROVAL.

* * * * *

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

SECTION 1. The City authorizes and directs the City Manager or her designee: (A) to accept on behalf of the City the conservation easement described below:

From Flying L Land & Livestock, L.L.C.

A conservation easement substantially in the form attached as **Attachment I** on the approximately 13,192.06 acres ranch known as Long Hollow in Uvalde County, the affected real estate being more particularly described in **Attachment II**.

SECTION 2. In connection with this authorization, the City Manager or her designee is further authorized and directed to do all things necessary or convenient to acquire the easement, including agreeing to non-material changes to the form, adapting the form to the specific transaction, and agreeing to, executing, and delivering all documents and instruments ancillary to acquiring the easement.

SECTION 3. The amount of \$8,184,450.00 is appropriated in fund 29083000, Parks Development & Expansion Venue Project, Internal Order # 390000000561, GL account 6102100 – Interfund Transfer out entitled Transfer to 24-00013-90-01. The amount of \$8,184,450.00 is authorized to be transferred to fund 40005000.

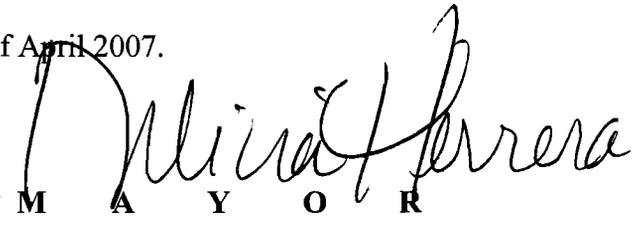
SECTION 4. The budget in fund 45005000, Project Definition 24-00013, Edwards Aquifer Protection Program, shall be revised by increasing WBS element 24-00013-90-01 entitled Trf Fr I/O# 390000000561, GL account 6101100 – Interfund Transfer In, by the amount \$8,184,450.00.

SECTION 5. The amount of \$8,184,450.00 is appropriated in Fund 40005000, Park Improvements Projects, Project Definition 24-00013, Edwards Aquifer Protection Program, WBS element 24-00013-03-06, entitled ROW Acquisition, G/L Account 5501075, and is authorized to be encumbered and made payable to Chicago Title Company as escrow agent for title to two conservation easements on two tracts of land.

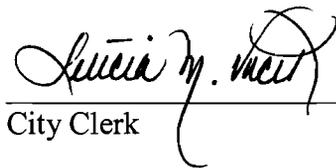
SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance becomes effective April 15, 2007, unless it receives the nine votes requisite to immediate effectiveness, in which case it becomes effective immediately.

PASSED AND APPROVED this 5th day of April 2007.

for 
M A Y O R
PHIL HARDBERGER

Attest:



City Clerk

Approved As To Form:



City Attorney

Agenda Voting Results

Name: 5.

Date: 04/05/07

Time: 03:17:23 PM

Vote Type: Multiple selection

Description: 5. An Ordinance authorizing acquisition of conservation easements over more than 15,000 acres of Edwards recharge zone property in Uvalde County for up to \$10,318,337.25 and authorizing payment of \$50,000.00 to The Nature Conservancy as cost reimbursement; and providing for an immediate effective date upon 3/4 City Council approval. [Presented by Shawn Eddy, Director, Asset Management; Pat DiGiovanni, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. MCNEIL	DISTRICT 2				
ROLAND GUTIERREZ	DISTRICT 3	Not present			
RICHARD PEREZ	DISTRICT 4	Not present			
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Attachment I

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

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF ?????? §

Grant of Conservation Easement

(????)

Grantor grants this conservation easement to Grantee as of the Effective Date.

Predicate Facts

Grantor owns the Property identified below in fee simple, subject to the Reservations From and Exceptions to Warranty.

The Property sits over the Edwards Aquifer recharge zone, the contributing zone, or both.

Grantor and Grantee both wish to restrict development on the Property in furtherance of protecting indefinitely the quantity and quality of the water percolating into the Edwards Aquifer.

The characteristics of the Property, its current use and state of improvement, are described in the Report (as defined below).

The Report is a complete and accurate description of the Property as of the date of this instrument, establishing the baseline condition of the Property as of the Effective Date and includes reports, maps, photographs, and other documentation;

In inquiring into the condition of the Property as of the date of this easement, the Report may be augmented but not contradicted by other evidence.

Grantor and Grantee have the common purpose of protecting the natural condition of the Property to further the Purposes of this easement in perpetuity.

The rights and obligations arising under this instrument are a bargained-for allocation of property rights between Grantor and Grantee.

Grant, Rights, and Obligations

Now, Therefore, in consideration of the premises, the mutual covenants and promises contained herein, \$10 in hand paid, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor grants and conveys to Grantee in perpetuity a conservation easement in gross over the Property. This easement is created under and is governed by Chapter 183 of the Texas Natural Resources Code, as amended, or its recodification.

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1. Basic Information.

Authorizing Ordinance:

Grantor:

Grantor’s Address: ????? (??? County)

Grantee:

Grantee's Address:

Property: /?????/ as more particularly described on **Exhibit A.**

Maximum Partitions: /???? No. of partitions ???/.

Maximum Number of Building Envelopes: Two for each Parcel.

No-Development Zones: ???? as more particularly described on **Exhibit B**, except Structures shown in the Report need not be removed.

Maximum Increased Impervious Cover: ??? square feet, which is intended to approximate 1/2 of one percent of the Property's total acreage, but the square footage controls

Maximum Impervious Cover per Building Envelope: 25% of the total square feet in the Building Envelope

Maximum Number of Water Wells: ?????

Report: The Easement Documentation Report dated ???? prepared by ????? relating to the Property, as shown on **Exhibit C.**

Exceptions to and Reservations from Warranty: As shown on **Exhibit D.** ????? *All items from Schedule B of title policy except rights of parties in possession and shortages in area.??????*

All exhibits are incorporated into this instrument by reference for all purposes, as if fully set forth.

2. Exhibits.

- Exhibit A Description of Property
- Exhibit B No-Development Zones
- Exhibit C Report
- Exhibit D Exceptions to and Reservations from Warranty

3. Purpose.

This easement's purpose ("Purpose") is to minimize the chance of materially impairing the quantity or quality of recharge into the Edwards Aquifer from the Property. In furthering the Purpose, the parties restrict numerous activities on the Property and seek to assure that the Property remains forever in approximately the same natural state in which it now exists, except as otherwise provided.

4. Definitions.

4.01. Building Envelope means an area set aside within the Property in which Structures may be built. Each Building Envelope is five acres.

4.02. Feeder means a device that dispenses or otherwise provides food to livestock or wildlife that sits on legs above the surface of the ground.

4.03. Hazardous Materials means (i) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder (including petroleum-based products as described therein); (iii) other petroleum and petroleum-based products; (iv) asbestos in any quantity or form which would subject it to regulation under any Applicable Laws; (v) polychlorinated biphenyls; (vi) any substance, the presence of which on the Property is prohibited by any Applicable Laws; and (vii) any other substance which, by any Applicable Laws, requires special handling in its collection, storage, treatment or disposal. As used herein, "Applicable Laws" means all laws, statues, ordinances, regulations, and judicial rulings now or hereafter adopted by any governmental authority with jurisdiction over the Property.

4.04. Hunting Blind means a structure of 50 square feet or less used for viewing wildlife or hunting. Blinds may but need not be elevated.

4.05. Impervious Cover means any artificial condition that substantially impedes absorption of water by the soil, including roofs, foundations, parking lots, Roads, and anything else covering or placed above the natural surface of the land. Trailers of all types count as Impervious Cover. Temporary Impervious Cover put in place by one claiming through a mineral lessee not a party to this instrument does not count against the Maximum Increased Impervious Cover limit..

4.06. Maximum Increased Impervious Cover means the maximum amount of the Property to which Impervious Cover may be added after the Effective Date. It does not include Impervious Cover shown in the Report (or replacements thereof), Temporary Impervious Cover, equipment, structures, facilities or other items placed on Property pursuant to or in connection with Grantee's rights under Section 15.01, or roads or rights of way on or through the Property acquired through condemnation or by exercise of a third party's right that predates this easement.

4.07. No-Development Zone means an area set aside within the Property in which no Building Envelopes, Roads, or other development may occur.

4.08. Parcel means a separate portion of the Property resulting from a Partition allowed under this instrument, the number of Parcels always equaling one more than the number of Partitions.

4.09. Partition means the division, subdivision, or partition of the Property. It includes platting, conveying part of the Property to another, or other arrangement creating characteristics of a subdivision, all as determined in the sole discretion of the Grantee. Creation of undivided interests in the Property does not create a Partition.

4.10. Road means any route traveled by motorized vehicles whether or not paved or otherwise improved. Roads include (A) completely unimproved paths on which soil compaction impairs recharge and (B) public roads bounded on both sides by the Property.

4.11. Temporary Impervious Cover pertain to drilling operations and means cover the operator is required by applicable law to remove on completion of drilling operations.

4.12. Structure means anything built on the land, excluding fences, Hunting Blinds, and Feeders.

5. Development-Related Provisions.

5.01. Grantor must maintain the Property in substantially the same state shown in the Report, except as otherwise provided in this instrument.

5.02. Grantor must not:

5.02.01. Exceed Maximum Increased Impervious Cover or the Maximum Impervious Cover per Building Envelope.

5.02.02. Partition the Property into more Parcels than allowed by the Maximum Partitions.

5.02.03. Except as otherwise expressly allowed by this instrument, build any Structures outside a Building Envelope, build a Structure higher than three stories, or allow a mobile home, motor home, or travel trailer to be lived in or stored on the Property outside a Building Envelope.

5.02.04. Install, maintain, repair, or replace more than one septic system for each Structure containing plumbing.

5.02.05. Unless Grantee consents in writing, grant new utility or Road easements. Grantee will generally withhold consent except when the easement is granted under threat of condemnation. Despite this proscription, Grantor may, without Grantee's consent but subject to the Maximum Increased Impervious Cover, grant road and utility easements reasonably necessary to service and to permit access to Parcels allowed under this instrument.

5.02.06. Except as otherwise provided in this instrument or as reasonably necessary to conduct activities permitted under this instrument, ditch, drain, fill, dig, or otherwise make permanent, substantial topographical changes. Grantor needs no permission to build stock tanks or other surface water-retention facilities, but stock tanks and other surface water retention facilities not shown in the Report must not exceed two acres each and must not cause the Property to exceed the Maximum Increased Impervious Cover, if the bottom of the facility is impervious. Surface water retention facilities built to facilitate recharge do not count toward the Maximum Increased Impervious Cover.

5.02.07. Drill or allow the existence of more than the Maximum Number of Water Wells on the Property. Water wells drilled by Grantee for monitoring or other Grantee purposes and not used by Grantor do not count against the Maximum Number of Wells.

5.02.08. Conduct any business activity on the Property that would draw large numbers of people to the Property at any one time or that might, as a reasonably expected incident of its conduct, materially impair the quantity or quality of the Edwards Aquifer recharge from the Property. A bed and breakfast or guest ranch with 10 or fewer bedrooms for guests is acceptable.

5.03. For so long as the activities are conducted so as not to materially impair the Purpose, Grantor may:

5.03.01. Reside and entertain family and guests on the Property.

5.03.02. Maintain, restore, and rebuild Structures in Building Envelopes or shown to be on the Property in the Report.

5.03.03. Continue use and enjoyment of the Property for ranching, agriculture, hunting, and recreation, consistently with other applicable express provisions of this instrument.

5.03.04. Allow temporary and storage structures outside Building Envelopes and outside No-Development Zones, but no such structures may cause the Property to exceed the Maximum Increased Impervious Cover.

5.03.05. Engage in all acts and uses that: (i) are permitted by law and (ii) are consistent with the Purpose.

5.04. If not identified in this instrument, Grantor may propose Building Envelope locations to Grantee. Grantor's requests for Building Envelope locations are handled according to the paragraph titled "Requests for Approval." Areas subject to Building Envelopes must be defined with the same degree of specificity required for identifying real property for conveyance. Approved Building Envelopes must be evidenced by a recorded memorandum signed by both Grantor and Grantee. The property description must be attached to the memorandum. All residences shown on the Report must be contained in a Building Envelope. If Grantee wishes to change a Building Envelope, in addition to following the process for designation of any Building Envelope, Grantor must assure that the former Building Envelope site is restored such that it will offer the same quantity and quality of recharge as similar, previously undeveloped areas.

6. Agriculture-Related Provisions.

6.01. Grantor must not:

6.01.01. Operate a feedlot, poultry farm, or similarly intensive animal operation.

6.01.02. Operate a horticultural nursery.

6.02. For so long as the activities are conducted in such a way as not to materially impair the Purposes of this instrument, Grantor may:

6.02.01. Graze livestock, but only according to a Grantee-approved plan or a United States Department of Agriculture Natural Resource Conservation Service-approved plan. If the United States Department of Agriculture Natural Resource Conservation Service ceases to exist or ceases to approve such plans, Grantee may designate an alternative, similarly qualified authority to review and approve livestock plans.

6.02.02. Grow crops in fields identified in the Report or approved by Grantee.

6.02.03. Hunt on the Property, lease the Property for hunting, and provide guided and unguided hunts.

6.02.04. Construct or install fences, Hunting Blinds, and Feeders, even in No-Development Zones.

6.02.05. Permit other outdoor recreation on the Property. In connection with recreation, Grantor may install composting toilets on the Property, but if it does so, Grantor must properly maintain them.

6.02.06. Foster the presence of wildlife on the Property.

6.02.07. Cut firewood for use on the Property.

6.02.08. Control brush according to a United States Department of Agriculture Natural Resource Conservation Service-approved plan or Grantee-approved plan. If the United States Department of Agriculture Natural Resource Conservation Service ceases to exist or ceases to approve such plans, Grantee may designate an alternative, similarly qualified authority to review and approve brush control plans.

7. Vegetation-Related Provisions.

7.01. Outside Building Envelopes, Grantor must not cut or remove vegetation, except Grantor may, without restriction, cut firebreaks up to 15 feet wide and cut and remove diseased or exotic vegetation or vegetation so damaged by natural forces as to be unable to survive. Grantor may further cut and remove native vegetation to further the Purpose, in Building Envelopes, and as may be reasonably necessary to conduct activities permitted under this instrument, but in so doing, it must minimize erosion and must not otherwise materially impair the Purpose.

7.02. Except for Building Envelopes and fields permitted under this instrument, Grantor must not plant exotic vegetation on the Property.

7.03. Except in fields permitted under this instrument, Grantor must not plow or use fertilizers.

8. Vehicle-Related Provisions.

Authorized representatives of Grantor and Grantee may use motorized vehicles anywhere on the Property in furtherance of their responsibilities under this easement and as reasonably necessary for Grantor's residential use, agricultural, ranching, and wildlife management operations, ecotourism, educational programs and maintenance of the Property. No such use may materially impair the Purpose. Except for the uses described above, Grantor must not use motorized vehicles on the Property except on Roads and parking areas shown in the Report, consented to in writing by Grantee, or otherwise permitted by this instrument.

9. Storage, Dumping, and Disposition-Related Provisions.

9.01. Grantor must not:

9.01.01. Store chemicals (except those for activities permitted under this instrument) that, if leaked, would materially degrade surface or subsurface water quality.

9.01.02. Dump trash, rubbish, or other waste, except short-term storage of material accumulated in the course of conducting activities permitted under this instrument. All such materials must be removed from the Property not less often than annually, and no such materials may leak chemicals into or otherwise pose a material degradation threat to the quality of water entering the Edwards Aquifer. Grantor may burn trash in a

container, but Grantor must not permit the residue from the fire to be dumped on the soil. All such residue must be contained until it is removed from the Property.

9.01.03. Generate, store, collect, transport, dispose, dump, or release hazardous waste or materials, in whatever form, or install or permit underground storage tanks on the Property

9.01.04. Store, use, or apply herbicides, biocides, pesticides, fertilizers, insecticides, fungicides, rodenticides, or any similar chemicals or agents, except for (A) household use or (B) use of chemicals, including fertilizers, on a list approved by Grantee, as the list may be changed from time to time. Grantee's list may impose time, quantity, and use restrictions. While the City of San Antonio is the Grantee, the City Manager may alter the list without further action or authorization by City Council. Grantor's use of such chemicals must conform to then current best practices, and Grantor must not allow permitted materials to leak into or otherwise pose a material degradation threat to the quality of water in the Edwards Aquifer. Grantor must indemnify Grantee from all loss, cost, liability, or expense arising from Grantor's use of such chemicals, with or without Grantee's permission.

9.02. Grantor represents and warrants, to Grantor's actual knowledge (with no duty to investigate), that:

9.02.01. No Hazardous Materials are or have been generated, treated, stored, used, disposed of, or deposited in or on the Property in such manner as to violate or create any liabilities pursuant to any Applicable Laws, and

9.02.02. No underground storage tanks are located on the Property.

9.02.03. No governmental authority has given notice of violation or alleged violation of any Applicable Law relating to the operations or condition of the Property.

10. Extraction-Related Provisions.

10.01. Grantor must not:

10.01.01. Use the surface for any activity related to extracting hydrocarbons or other minerals on or below the surface, including storing hydrocarbons or other minerals. Minerals include not only hydrocarbons but also coal, lignite, uranium, ore, and any other substance that may be removed from the earth.

10.01.02. Remove topsoil or remove or mine sand, gravel, rock, or other materials, except Grantor may use such materials reasonably necessary to construct, maintain, and repair Roads on the Property or to conduct activities permitted under this instrument. Grantor may also permit archaeological digs supervised by qualified personnel.

10.01.03. Deplete, or extract surface or subsurface water, transfer surface or subsurface water rights for use off the Property, or otherwise to use water or water rights other than in direct support of activities Grantor may, consistently with this instrument, otherwise engage in on the Property.

10.01.04. Sever from surface ownership of the Property the ownership of previously unsevered minerals or convey to another that is not bound by this instrument any severed mineral interest.

10.02. No party to this instrument may hereafter exploit any severed and unsevered minerals pertinent to the Property. Neither may any party hereto convey any mineral interest or executive right in minerals to another without the written consent of the other party. Both parties acknowledge this restraint is reasonable, because mineral exploitation poses a risk to recharge into the Edwards Aquifer. This clause does not prevent a party to this instrument from accepting royalties, bonuses, delay rentals, or other sums due to the party from another with a previously existing right to exploit the minerals.

10.03. If all or part of the minerals are, as of the date this instrument, owned by someone not a party to this instrument, whenever the surface owner's consent is required for any activity by the non-joining mineral owner, the right to consent or not is among the rights Grantor conveys to Grantee under this instrument.

11. Water Flow-Related Provisions.

Grantor must not:

11.01. Alter natural water courses, lakes, ponds, marshes, or other water bodies, subject to Grantor's right to have stock tanks and other surface-water retention facilities, except for maintenance of permitted Roads.

11.02. Pollute the soil or surface or subsurface water or otherwise engage in activities materially detrimental to water purity or that could materially alter the natural water level or flow in or over the Property. This does not impair the right to use the wells permitted under this instrument for the purposes permitted under this instrument.

11.03. Otherwise, materially and adversely affect the quantity and quality of recharge percolating into the Edwards Aquifer from the Property.

12. Requests for Approval.

12.01. When Grantee's consent is needed for any purpose under this instrument, Grantor must submit requests in writing. The requests must set out all detail reasonably required by Grantee, including plans, specifications, and designs where appropriate. The request must include a timetable sufficiently detailed to permit Grantee to monitor progress. Grantor must not make changes or take action for which Grantee's approval is required, unless expressly authorized in writing by Grantee.

12.02. Grantee may consult with governmental agencies, nonprofit preservation and conservation organizations, and other advisors concerning appropriateness of any activity proposed under this Easement.

12.03. Grantee may exercise its approval rights in its reasonable discretion. Grantee must respond to a request by Grantor within 60 days of its receipt of the request. Grantee's failure to respond timely is not approval of Grantor's request, but Grantee must not unreasonably withhold, condition, or delay its approval.

12.04. If Grantor does not begin approved actions within one year, the approval is void. Grantor may resubmit the request, but previous approval does not estop Grantee from denying approval on resubmission.

12.05. If Grantee is the City of San Antonio, in any case in which Grantee's consent or agreement is required under this instrument, other than for an amendment of this instrument, the

consent or agreement may be given by the City Manager or the manager's designee without authorization of City Council. The manager's delegation of authority to a designee must be in writing. Grantee is not estopped by the actions of anyone to whom the manager's authority has not been delegated in writing. If the City of San Antonio no longer has a City Manager, the governing body of the City may designate an officer to give consents and agreements called for under this instrument. City Council's approval of this easement is approval of the delegation of this paragraph to the City Manager.

13. No Public Access.

Except as expressly provided, this easement creates no right of access to the general public.

14. Ownership Obligations.

Grantor is solely responsible to pay all taxes and assessments levied against the Property. Grantee has no responsibility to Grantor to maintain any part of the Property, except for improvements, if any, installed by Grantee.

15. Grantee's Rights.

15.01. In addition to other rights necessarily incident to Grantee's ability to further the Purpose of this easement, Grantee has the following rights regarding the Property:

15.01.01. The right to monitor the hydrology of the Edwards Aquifer and other water or geologic formations below the subject Property, subject, however, to the entry requirements set out below.

15.01.02. The right to enter the Property twice a calendar year to inspect to determine compliance with this easement. If Grantee finds a potential violation of this easement, Grantee may enter the Property as much as necessary to monitor the status of the problem, obtain evidence for enforcement, or correct the problem at Grantor's expense. In so doing, Grantee must not interfere unreasonably with Grantor's permitted uses of the Property.

15.01.03. The right to install, operate, and maintain Purpose-related monitoring equipment, including a continuous recording rain gauge at locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) that do not unreasonably interfere with Grantor's activities otherwise permitted under this easement. Grantee may install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring equipment.

15.01.04. The right to drill, operate, and maintain monitoring wells at locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) that do not interfere unreasonably with Grantor's permitted uses of the Property. Grantee may install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring wells.

15.01.05. The right to conduct research activities with appropriate research entities related to watershed management, water quality protection, or other similar purposes consistent with the Purposes of this easement. Grantee may also use the Property for educational purposes, including field trips related to natural science education, but not more often than once annually. Grantee must coordinate all such activities with the Grantor, and Grantee's right to conduct such activities are subject to Grantor's approval, which must not be unreasonably withheld.

15.01.06. The right to review and approve plans of the Grantor involving cave Structures and other sensitive hydrogeologic features on the Property.

15.01.07. The right to construct, operate, and maintain at mutually agreed locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) one or more recharge structures and associated facilities that do not unreasonably interfere with Grantor's permitted uses of the Property.

15.02. If Grantee's exercise of any rights under this Section 15 disturbs the Property, Grantee will use its good-faith efforts to restore the Property to its previous condition. This includes restoring fences and plugging abandoned wells according to applicable law. Grantee is responsible for maintenance of areas fenced by it, for equipment, structures or facilities it places on the Property, and for any contractor or individuals entering the Property pursuant to or in connection with Grantee's rights under this instrument. Except as expressly provided to the contrary, no approval or consent required under this section may be unreasonably withheld, conditioned, or delayed. Grantee will provide 72-hour advance, written notice to Grantor before entry, except when immediate entry is necessary or desirable to further the Purpose, to prevent, terminate, or mitigate a violation of this easement, or to fulfill Grantee's maintenance obligations under this instrument.

15.03. None of the enumerated rights imposes a duty on Grantee to exercise the right.

15.04. Grantor is responsible for remedying violations of this instrument, but Grantee has the right to prevent and correct violations through any means available at law or in equity, including injunction. If Grantee finds a violation, it may, at its discretion, take appropriate legal action or, at Grantor's expense, eliminate or ameliorate any material, continuing violation of this instrument, including any artificial condition that may materially impair the Purpose. Except when an ongoing or imminent violation might substantially diminish or impair the Purpose, Grantee must give Grantor 20-days' prior written notice before initiating action. If a violation cannot reasonably be corrected within 20 days, Grantee may allow Grantor a longer period that is reasonably necessary under the circumstances to correct the violation. In such case, Grantor must begin corrective action with the 20 days and thereafter diligently and continuously pursue complete correction in good faith. Nothing in this instrument requires Grantor to restore the Property after any act of God or other event over which Grantor had no control, but Grantor must permit Grantee to correct conditions caused by such events that impair quantity or quality of recharge. In so doing, Grantee must not interfere unreasonably with Grantor's permitted uses of the Property.

15.05. Grantor acknowledges that, once pollution enters the Edwards Aquifer, it may be impossible to undo the damage. Likewise, surface water that might percolate into the aquifer, but that Grantor wrongfully allows to run off, is irreplaceable. Further, loss of the Property and the Edwards Aquifer as natural phenomena cannot be compensated adequately by damages. Accordingly, the parties acknowledge that, in the case of a material, uncorrected violation of this easement, Grantee has no adequate remedy at law. In such case, equitable relief generally and an injunction specifically are appropriate remedies.

15.06. Grantee has the right to recover all costs and expenses, including court costs and reasonably attorneys fees, incurred enforcing this easement.

15.07. Grantee's remedies are cumulative. Its exercise of one remedy is not an election of remedies and does not waive or limit other remedies. Failure to exercise a remedy on one or more occasions does not waive or limit use of the remedy on other occasions.

15.08. Grantee has discretion whether and how to enforce this easement. Grantee's delay in or forbearance from exercising rights under this easement does not waive the rights the exercise of which is delayed or forborne.

16. Alienation by Grantee.

16.01. This easement is in gross and is freely alienable by Grantee, subject to the following conditions:

16.01.01. The transferee must be both a "holder" under Section 183.001 of the Texas Natural Resources Code (as the same may be amended from time-to-time) and also a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code.

16.01.02. The transferee must expressly assume the responsibilities of the grantee under this easement.

16.02. If Grantee ceases to exist or no longer qualifies as a holder under applicable law, the easement continues. On application by grantor or grantee, a court of competent jurisdiction must transfer Grantee's rights under this easement to a qualified organization having similar purposes that agrees to assume the responsibility. If more than one qualified entity competes for the role, the court should select the entity that, in the court's judgment, is best suited to assure accomplishment of the Purposes.

17. Alienation by Grantor.

The Property is freely alienable by Grantor, but Grantor must notify Grantee in writing at least 30 days before transfer. The notice must include the name of the buyer, the anticipated closing date, and evidence that the buyer has been given a copy of this easement. If Grantor transfers all the Property or a Parcel of it to more than one transferee, the joint transferees must, at the closing of the transfer to them, designate a single party to receive notices from Grantee and to give all approvals and consents to Grantee. If the joint transferees do not unanimously designate a contact for Grantee, Grantee may pick one at random with no liability to the other transferees. Grantor's transferees take subject to this instrument.

18. Amendment.

This easement may be amended only with the written consent of both Grantor and Grantee. Any amendment must be consistent with the Purposes of this easement and must comply with applicable law, including Sec. 170(h) of the Internal Revenue Code, as amended from time-to-time, and with Chapter 183 of the Texas Natural Resources Code, as amended from time-to-time. If the Grantee is the City of San Antonio, its consent to an amendment must be authorized by City Council or a successor governing body.

19. Termination, Condemnation.

19.01. The easement may be terminated by judicial declaration if condemnation or a change in conditions on or around the Property renders it impossible to substantially fulfill the Purposes of this easement.

19.02. Grantee's interest is a compensable property right. If some or all of the Property is condemned, Grantor and Grantee will divide the condemnation proceeds as follows. Grantor receives a share equal to the entire award multiplied times a fraction, the numerator of which is the value of the Property burdened by the easement and the denominator of which is the value

of the Property unburdened by the easement. Grantee receives the rest of the award. Values are measured at the time of condemnation.

20. Interpretation.

This easement is to be interpreted under the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Purposes, without regard to which party was the drafter. This easement was fully negotiated, and no presumption exists against either party. Nothing in this easement excuses Grantor from compliance with any applicable law, rule, ordinance, or regulation.

21. Severability.

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

22. Successor, Beneficiaries.

This easement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. No third party has the right to enforce any part of this easement.

23. Encumbrance by Grantor.

Grantor may encumber the Property (including consensual liens) after the effective date of this instrument, but all such encumbrances are subordinate to this easement.

24. Appropriations.

All obligations of the City of San Antonio under this instrument are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year.

25. Notices from Governmental Authorities.

Grantor must deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five days of receipt. Upon request by Grantee, Grantor must promptly furnish Grantee with evidence of Grantor's compliance with the notice or lien if compliance is required by law.

26. Easement Runs with the Land; No Merger.

This easement continues in perpetuity and runs with the land. It is binding upon Grantor and all those claiming by, through, or under Grantor. Any right, title, or interest granted in this instrument to Grantee passes to each successor and assign of Grantee and each following successor and assign, and the word "Grantee" includes all such successors and assigns. This easement survives unity of ownership of the fee and the easement, unless the owner of the united interests declares otherwise in an instrument recorded in the real property records in the county in which the Property or any portion of it is located.

27. Effective Date.

The effective date of this instrument is the date it is recorded in the real property records of the county in which the Property is located or, if the Property crosses county lines, in any county in which a portion of the Property is located.

TO HAVE AND TO HOLD, this easement unto the Grantee and its successors and permitted assigns forever. Without limitation, this easement conveys to Grantee all development rights in the Property not expressly retained by Grantor. Grantor conveys to Grantee all mineral executive rights held by Grantor. Grantor further conveys to Grantee the property right to enforce this instrument according to law. Grantor conveys to Grantee the property rights Grantor would otherwise have to perform activities limited or prohibited by this instrument. Grantor violates its obligations under this instrument if it violates any applicable law the observance of which would further the Purpose.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular this easement to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, but excepting the Reservations From and Exceptions to Warranty.

In Witness Whereof, the parties have caused their representatives to set their hands. By the signature of its representative below, Grantee manifests its acceptance of this easement.

Grantee:

City of San Antonio, a Texas
municipal corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Grantor:

????????????????????

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by _____,
_____ of the City of San Antonio, a Texas municipal corporation,
in the capacity therein stated and on behalf of that entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

THE STATE OF TEXAS §

COUNTY OF BEXAR §

This instrument was acknowledged this date before me by /name of signer/, /office held/
of /corpname/, a Texas corporation, in the capacity therein stated and on behalf of that
entity in the entity's capacity as general partner of /name of limited partnership/.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

Attachment II

**FIELD NOTES DESCRIPTION FOR 13192.06 ACRES OF
THE EDWARDS COUNTY INVESTMENT PARTNERSHIP
PROPERTY IN UVALDE COUNTY, TEXAS (TRACT A)
UNDER FENCE, IN VOLUME 308, PAGE 734**

Being all of a certain tract or parcel of land containing 13192.06 acres, more or less, comprising approximate acreage out of various Original Patent Surveys in Uvalde County, Texas as follows:

Survey No.	Survey	Block	Abstract No.	Acres
1	G.C. & S.F. R.R. Co.	A	941	607.43
2	J.J. Dodson	A	1585	660.40
3	G.C. & S.F. R.R. Co.	A	935	637.17
4	M.M. Dodson	A	1734	647.17
5	G.C. & S.F. R.R. Co.	A	934	507.16
6	J.J. Dodson	A	1587	704.18
7	G.C. & S.F. R.R. Co.	A	932	704.98
8	G.M. Smith	A	1703	705.79
9	G.C. & S.F. R.R. Co.	A	940	704.59
10	J.J. Dodson	A	1586	704.36
11	G.C. & S.F. R.R. Co.	A	1106	1104.34
12	J.J. Danson	A	1631	595.86
13	G.C. & S.F. R.R. Co.	A	942	704.06
14	G.M. Smith	A	1704	703.63
15	G.C. & S.F. R.R. Co.	A	931	514.50
15	T.C. Ry. Co.	B	1043	635.62
16	W.M. Bunton	A	1748	42.34
154	Anthony Blandin		41	341.38
155	Anthony Blandin		40	589.82
158	Charles B. Underhill		507	308.65
159	E.H. Winfield		536	323.39
333	Georgetown R.R. Co.	B	624	632.76
1038	T.C. Ry. Co.	B	1815	112.48

part of 12272.68 acres conveyed from Bank One, Texas, N.A., to Edwards County Investment Partnership, by a Special Warranty Deed executed the 30th day of May, 1991, and recorded in Volume 308 at Page 734 of the Deed Records of Uvalde County, Texas; and being more particularly described by metes and bounds as follows:

BEGINNING at a 1" iron pipe found for the easterly south corner of said Survey No. 1 and the herein described tract, in the common line between said 12272.68 acres and 1832.5 acres conveyed from J.S. Ford, Jr., et al, to O.R. Winn, by a Warranty Deed executed the 18th day of September, 1948, and recorded in Volume 109 at Page 548 of the Deed Records of Uvalde County, Texas;

THENCE, with the common line between said 12272.68 and 1832.5 acre tracts, N19°59'58"W., 2518.78 ft. to an unmarked point for a reentrant corner of said 12272.68 acres and the herein described tract, a north corner of said 1832.5 acres; and S70°00'02"W., 971.83 ft. to an unmarked point in a fence for a south corner of the herein described tract;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, N43°47'31"W., 908.06 ft. to an unmarked point for a southwest corner of the herein described tract, in the common line between said 12272.68 and 1832.5 acres;

THENCE, with the common line between said 12272.68 and 1832.5 acre tracts, N19°59'58"W., 1949.58 ft. to an unmarked point for a reentrant corner of said 12272.68 acres and the herein described tract, a north corner of said 1832.5 acres; and S70°00'02"W., 859.56 ft. to an unmarked point in a fence for a south corner of the herein described tract;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, N43°47'31"W., 5955.54 ft. to a fence post

for a reentrant corner of the herein described tract; and S69°38'59"W., 483.10 ft. to an unmarked point for a south corner of the herein described tract, in the common line between said 12272.68 and 1832.5 acres;

THENCE, with the common line between said 12272.68 and 1832.5 acre tracts, N19°59'30"W., 317.58 ft. to an unmarked point for a reentrant corner of said 12272.68 acres and the herein described tract, the south corner of said Survey No. 10, a north corner of said 1832.5 acres; S70°00'23"W., 1918.78 ft. to an unmarked point for a south corner of said 12272.68 acres and the herein described tract, the most southerly corner of said Survey No. 11; N19°59'30"W., 2578.11 ft. to an unmarked point for a reentrant corner of said 12272.68 acres, and the herein described tract and said Survey No. 11; and S70°00'30"W., 2265.92 ft. to an unmarked point in a fence for a south corner of the herein described tract, a northeast line of 721.3052 acres conveyed from Douglas Allan, to Cynthia Winn Allan, by a Warranty Deed executed the 19th day of December, 1984, and recorded in Volume 260 at Page 286 of the Deed Records of Uvalde County, Texas;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, N19°45'23"W., 1825.54 ft. to a fence post; N20°30'06"W., 1008.09 ft. to a fence post for a reentrant corner of the herein described tract, a north corner of said 721.3052 acres; S69°21'40"W., 2465.63 ft. to a fence post; and S69°41'56"W., 2711.65 ft. to a fence corner in the northeast right-of-way line of State Highway No. 55 for a southwest corner of the herein described tract, in a southwest line of said 12272.68 acres;

THENCE, along or near a fence, with the common line between said 12272.68 acres and said State Highway No. 55, N40°58'50"W., 2610.24 ft. to a ½" iron stake set at the beginning of a 01°28'37" curve to the left; 701.76 ft. along the arc of said curve subtended by a 10°21'49" central angle and 3879.72 ft. radius (long chord = N46°09'45"W., 700.81 ft.) to a ½" iron stake set at its end; N50°45'28"W., 501.32 ft. to a ½" iron stake set at the beginning of a 02°54'31" curve to the left; 641.64 ft. along the arc of said curve subtended by a 18°39'46" central angle and 1969.86 ft. radius (long chord = N60°05'48"W., 638.80 ft.) to a ½" iron stake set at its end; and N69°25'14"W., north of a fence, at approximately 260 ft. crossing a fence, then continuing not along a fence for a total distance of 645.84 ft. to a ½" iron stake set on the east bank of the Nueces River for the most westerly southwest corner of the herein described tract;

THENCE, with the west line of said 12272.68 acres and the herein described tract, the east bank of said Nueces River, (all points being unmarked): N00°17'43"E., 1230.93 ft.; N01°45'59"E., 589.57 ft.; N12°28'27"E., 843.19 ft.; N10°43'10"E., 827.45 ft.; N10°01'50"E., 1136.38 ft.; N13°01'47"E., 624.22 ft.; N25°15'17"E., 407.04 ft.; and N45°48'45"E., 429.42 ft. for the northwest corner of said 12272.68 acres and the herein described tract, in the south line of 6826.43 acres conveyed from Haven Swint Friday, to Spur HS Management, L.L.C., by a Special Cash Warranty Deed executed the 22nd day of March, 2002, and recorded in Volume 483 at Page 39 of the Official Public Records of Uvalde County, Texas;

THENCE, with the common line between said 12272.68 and 6826.43 acre tracts, N70°00'09"E., 633.14 ft. to an unmarked point in a fence for a northwest corner of the herein described tract;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, S48°29'05"E., 67.37 ft. to a fence post for a reentrant corner of the herein described tract; and N69°50'44"E., 13760.51 ft. to a fence post for the north corner of the herein described tract, in the common line between said 12272.68 and 6826.43 acre tracts;

THENCE, along or near a fence, with the common line between said 12272.68 and 6826.43 acre tracts, S66°14'57"E., at 5320.78 ft. passing a fence corner post, then continuing not along a fence for a total distance of 5408.10 ft. to an unmarked point for a reentrant corner of said 12272.68 acres and the herein described tract, a south corner of said 6826.43 acres; N70°00'23"E., 1366.00 ft. to a 1" iron pipe found for the north corner of said Survey No. 14; and N70°00'23"E., 977.11 ft. to an unmarked point for a northwest corner of the herein described tract;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, S86°08'58"E., 202.56 ft. to a fence post; and N69°57'14"E., 1554.82 ft. to a fence corner post in the common line between said 12272.68 and 6826.43 acre tracts;

THENCE, along or near a fence, with the common line between said 12272.68 and 6826.43 acre tracts, S47°50'01"E., 2453.67 ft. to a fence post; and S47°19'39"E., 1801.00 ft. to a found 5/8" iron stake for the south common corner between said 6826.43 acres and 1902.75 acres conveyed from Dan F. Mason, Trustee, to Briscue Ranch, Inc., by a Warranty Deed executed the 28th day of May, 1998, and recorded in Volume 397 at Page 118 of the Official Public Records of Uvalde County, Texas;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, with the south line of said 1902.75 acres, S19°13'49"E., 807.57 ft. to a found 5/8" iron stake; S48°28'01"E., 398.00 ft. to a found rock mound; S85°53'23"E., 667.32 ft. to a fence post; and S41°54'57"E., 136.64 ft. to an unmarked point in an east line of said 12272.68 acres;

THENCE, with a northeast line of said 12272.68 acres, S19°59'54"E., 141.11 ft. to a 1" iron pipe found for the north corner of said Survey No. 8, a reentrant corner of said 12272.68 acres and the herein described tract; and N44°58'55"E., 52.75 ft. to an unmarked point in a fence for a north corner of the herein described tract, in the south line of said 1902.75 acres;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, with the south line of said 1902.75 acres, S41°54'57"E., 1018.72 ft. to a fence post; N81°33'13"E., 373.92 ft. to a fence post; S56°28'55"E., 341.14 ft. to a fence post; and S87°07'36"E., 456.88 ft. to an unmarked point in a northeast line of said 12272.68 acres for a northeast corner of the herein described tract;

THENCE, with a northeast line of said 12272.68 acres, S44°59'58"E., 213.49 ft. to an unmarked point for a reentrant corner of said 12272.68 acres and the herein described tract; N45°00'02"E., at 464.20 ft. passing a 1" iron pipe found for the west corner of said Survey No. 15, then continuing for a total distance of 5743.55 ft. to an unmarked point for a north corner of said 12272.68 acres and the herein described tract; and S44°59'58"E., 2203.34 ft. to a fence post in the common line between said 12272.68 and 1902.75 acre tracts;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, with a southwest line of said 1902.75 acres, S37°06'51"E., 404.87 ft. to a fence post; S44°31'20"E., at 1552.22 ft. passing an easterly south corner of said 1902.75 acres, then continuing upon, over and across said 12272.68 acres for a total distance of 6117.45 ft. to a fence post; and S86°41'18"E., 160.12 ft. to an unmarked point for a northeast corner of the herein described tract, in the common line between said 12272.68 acres and 4023.4 acres conveyed from E. Arleigh Owen, et ux, to Mary Owen Manry by a Deed of Gift executed the 11th day of April, 1972, and recorded in Volume 185 at Page 206 of the Deed Records of Uvalde County, Texas;

THENCE, with the common line between said 12272.68 and 4023.4 acre tracts, S44°59'58"E., 1720.75 ft. to an unmarked point for the east corner of said 12272.68 acres, Survey No. 333 and the herein described tract, in the northwest line of 7885.599 acres conveyed from Diana Louise Bullough Raney to Jack Stone by a Quitclaim Deed executed the 15th day of December, 1980, and recorded in Volume 232 at Page 317 of the Deed Records of Uvalde County, Texas;

THENCE, with the common line between said 12272.68 and 7885.599 acre tracts, S45°00'02"W., 8302.22 ft. to an unmarked point for a reentrant corner of said 12272.68 acres, said Survey No. 3 and the herein described tract, a west corner of said 7885.599 acres; and S44°59'58"E., with the common line between said 12272.68 and 7885.599 acre tracts, 625.78 ft. to an unmarked point in a fence for a northeast corner of the herein described tract;

THENCE, along or near a fence, upon, over and across said 12272.68 acres, S18°43'13"W., 221.20 ft. to a found 5/8" iron stake; S25°36'16"W., 290.47 ft. to a found 5/8" iron stake; S50°00'54"W., 461.66 ft. to a found 5/8" iron stake; S50°43'53"W., 1409.47 ft. to a found 5/8" iron stake; S53°05'32"W., 3105.14 ft. to a found 5/8" iron stake; S52°34'38"W., 663.24 ft. to a found 5/8" iron stake for a reentrant corner of the herein described tract; S08°16'32"E., 1632.25 ft. to a fence post for an east corner of the herein described tract; S68°12'06"W., 1112.02 ft. to a fence post; S73°37'59"W., 269.97 ft. to a fence post; S64°32'34"W., 324.96 ft. to a fence post; S70°29'34"W., 640.43 ft. to a fence post; S69°38'39"W., 990.41 ft. to a fence post; S69°42'13"W., 986.39 ft. to a fence post; S70°08'14"W., 983.10 ft. to a

fence post; $S70^{\circ}06'49''W$, 951.32 ft. to a fence post; and $S69^{\circ}48'06''W$, 3105.80 ft. to the PLACE OF BEGINNING.

I hereby certify that this field notes description and accompanying plat are accurate representations of the property contained therein as determined by a survey made on the ground under my direction and supervision, and that all property corners are as stated. (Bearing basis = True north based on GPS observations)

Dates surveyed: May 11 through June 20, 2006

Dated this 4th day of July, 2006


Mike A. Grogan
Registered Professional Land Surveyor No. 5296



**CITY OF SAN ANTONIO
ASSET MANAGEMENT DEPARTMENT
MEMORANDUM**

TO: Sheryl Sculley, City Manager

FROM: Shawn Eddy, Asset Management Director

COPY: Mayor & City Council; Pat DiGiovanni, Deputy City Manager 

SUBJECT: City Council Agenda Item # 5

DATE: April 4, 2007

Please be advised that staff will be changing the recommended action regarding item # 5 on the April 5, 2007 City Council agenda. The original recommendation included the acquisition of two conservation easements over more than 15,000 acres of Edwards recharge zone property in Uvalde County for up to \$10,318,337.25 and authorizing payment of \$50,000.00 to The Nature Conservancy as cost reimbursement.

Staff will now be recommending the acquisition of only one conservation easement on a tract of land known as the Long Hollow tract (13,192 acres) situated in Uvalde County, Texas in the amount of \$8,184,450.00. The remaining conservation easement of 2,656 acres in Uvalde County totaling \$2,120,000 will be brought forward for City Council consideration at a future date. At this time, staff is continuing to work with the Nature Conservancy to finalize the conservation easement.

As this item is scheduled as an individual item on tomorrow's agenda, staff will be available to answer any questions that you may have.

