

AN ORDINANCE 2008-11-06-1002

APPROVING A FUNDING AGREEMENT WITH ALAMO COMMUNITY COLLEGE DISTRICT FOR THE PAYMENT OF UP TO \$200,000.00 FOR IMPROVEMENTS TO THE PALO ALTO COLLEGE SOCCER FIELD LOCATED IN COUNCIL DISTRICT 4, A 2007-2012 PARK BOND PROGRAM PROJECT.

* * * * *

WHEREAS, this ordinance will authorize a Funding Agreement with Alamo Community College District (ACCD) for the expenditure of up to \$200,000.00 for improvements to the Palo Alto College soccer field located at 1400 W. Villaret in City Council District 4; and

WHEREAS, this agreement is for twenty-five (25) years and will expire in October 2033; and

WHEREAS, this project allows for the City to again collaborate with ACCD to provide construction of field lighting, parking, a concession stand and restroom facilities at the Palo Alto College soccer field; and

WHEREAS, the soccer field is currently available for public use and was initially constructed through a Joint Use and Participation Agreement between the City and ACCD which authorized reimbursement of up to \$250,000.00 in 2003-2007 Park Bond Funds; and

WHEREAS, ACCD accepts full responsibility to manage and provide all of the activities and services necessary to complete this project; and

WHEREAS, under the terms of the Funding Agreement, the facility design and bond fund expenditures must be completed by June 31, 2009; and

WHEREAS, on May 12, 2007, San Antonio citizens approved the 2007-2012 Park Bond Program which included up to \$200,000.00 for improvements to the soccer field; and

WHEREAS, the total cost of the project is estimated at \$400,000.00; and

WHEREAS, the City will reimburse ACCD for approximately 50% of the total construction budget or a total of \$200,000.00, whichever is less; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute a Funding Agreement with Alamo Community College District (ACCD) for the payment of up to \$200,000.00 for improvements to the Palo Alto College soccer field located in Council District 4, a 2007-2012 Park Bond Program

project. A copy of the funding agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Payment not to exceed \$200,000.00 is available from previously appropriated funding in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00114, Palo Alto College Soccer Field, and is authorized to be encumbered and made payable to ACCD for reimbursement of costs related to the Palo Alto College soccer field improvements.

SECTION 3. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 40-00114, Palo Alto College Soccer Field, shall be revised by decreasing/increasing the SAP WBS Elements as follows:

WBS NO.			WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
40	00114	01-08	Design Enhancement	5201040	Fees to Professionals	\$2,000.00	-\$2,000.00	\$0.00
40	00114	04-02	Environmental Costs	5201040	Fees to Professionals	\$1,475.40	-\$1,475.40	\$0.00
40	00114	05-02	Construction Costs	5201140	Construction Costs	\$147,540.00	\$52,460.00	\$200,000.00
40	00114	05-07	Project Contingency	5201140	Construction Costs	\$13,976.63	-\$13,976.63	\$0.00
40	00114	01-03	Consultant Contract Fees	5201170	Engineering Fees	\$22,131.00	-\$22,131.00	\$0.00
40	00114	01-07	Project Capital Administrative Costs	5402010	Capital Prog Admin Costs	\$11,876.97	-\$11,876.97	\$0.00
40	00114	04-01	Environmental Capital Administrative Costs	5402010	Capital Prog Admin Costs	\$1,000.00	-\$1,000.00	\$0.00

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

SECTION 5. This ordinance shall be effective on and after November 16, 2008.

PASSED AND APPROVED this 6th day of November, 2008.

M A Y O R

ATTEST: *Patricia M. Vance*
 City Clerk

APPROVED AS TO FORM: *Hollis Young*
 for City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 44

Name:	44
Date:	11/06/2008
Time:	03:45:29 PM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Funding Agreement with Alamo Community College District for the payment of up to \$200,000.00 for improvements to the Palo Alto College soccer field located in Council District 4, a 2007-2012 Park Bond Program project. [A.J. Rodriguez, Deputy City Manager; Xavier Urrutia, Interim Director, Parks & Recreation]
Result:	Passed

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

WHEREAS, the public benefit to be gained from the project is the provision of recreational facilities, operated under non-profit regulations, available for the citizens of San Antonio.

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

I. TERM

1.01 The term of this Agreement shall commence upon execution of the Agreement by the City Manager or designee and continue for twenty-five (25) years.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Project by June 31, 2009. The project shall include the construction of improvements at Palo Alto College on Alamo Community College property to include, at a minimum, field lighting, parking, concession stand and restroom facilities ("Project Improvements") at the soccer field as shown on Attachment A.

2.02 Current budget estimates of the Project are approximately \$400,000. Grantee shall provide all necessary funding for the Project beyond the City's commitment contained herein and provide evidence to City that all Project funds have been secured. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Associate Vice Chancellor of Facilities, John Strybos, shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Capital Improvements Management Services ("CIMS") or his designee shall be responsible for the administration of this Agreement on behalf of City until the completion of the Project; thereafter, the Director of the Parks and Recreation Department or his designee shall be responsible for the administration of this Agreement on behalf of City.

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

2.06 Grantee shall provide to City their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant

boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 Grantee shall submit all future changes to the CIMS Director or his designee for review and approval to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the CIMS Director or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

2.09 Beginning on January 31, 2010, and on each succeeding January 31 throughout the term of the Agreement, Grantee shall provide to City an annual report ("Annual Report"). The Annual Report shall include the following:

- 2.09.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.
- 2.09.2 Evidence of insurance coverages, with City as additional insured, as outlined in Section 12 below.
- 2.09.3 Description of all maintenance activities, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

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 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 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

1. Chapter 252 and 2254 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
2. Government Code 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).
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.

4. City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2007-04-12-0396.) Grantee may obtain authoritative interpretations and guidance for such compliance from the City's Department of Economic Development (207-3900)

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it is the fee simple owner of Palo Alto College, located at 1400 W. Villaret Blvd, San Antonio, Texas, as well as the adjacent tract of land on which it intends to construct the Project, and will continue to be the fee simple owner during the term of this Agreement. In addition, Grantee shall not encumber the property where the Project is built without the prior written approval of City.

4.02 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours of the facility 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 Project Improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project Improvements. Except for special events, no admission fees shall be charged to the general public for the use of the Project facility. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

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

4.04 The Project Improvements shall be used for the benefit of the public through use of the soccer field during the entire term of the Lease and the term of the Bonds in connection therewith. Grantee may charge reasonable and customary fees for the rental of the soccer field and Project Improvements. Such fees shall not exceed the established fees charged for City soccer field rental.

4.05 Parks and Recreation Department sponsored events will not be subject to rental fees.

4.06 If a special event or activity is co-sponsored by City and Grantee, both parties shall mutually agree upon appropriate fees and charges.

4.07 In accordance with the Joint Participation and Use Agreement dated February 17, 2005, Grantee has exclusive use of the soccer field on weekdays until 4:00 PM and City has exclusive use of the soccer field on weekends and after 4:00 PM on weekdays. Use of Project Improvements shall be concurrent with use of the soccer field.

4.08 Any adjustments to the above exclusive use periods and the resulting exact schedule for use of the Project Improvements shall be mutually agreed by Grantee and City.

4.09 Grantee shall be responsible for scheduling the use of the Project Improvements, including scheduling of City events. Grantee schedulings will include times when Grantee and/or Palo Alto College is closed, such as holidays. Grantee scheduling for City events will include coordination of any required Grantee maintenance support.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$200,000.

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 Funding shall consist of reimbursements paid to Grantee for costs of construction of the Project, not to exceed \$200,000.

5.04 It is further expressly understood and agreed by City and Grantee that the City's obligations under this Agreement are based on a minimum match of \$200,000 provided by Grantee and that City's obligation to pay the funds under this Agreement is limited to an amount equal to approximately 50% of the total budget of the Project, or a total of \$200,000, whichever is smaller. Failure to match City funds will result in the City limiting the amount of funds provided to Grantee under this Agreement. Additionally, it is expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

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. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the

Projects. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

6.03 City shall reimburse Grantee based on the following schedule:

- 6.03.1 45% of funds after: a) approval by City of Grantee's Plans and specifications, and b) submittal by Grantee to City of evidence that all funds necessary to complete the Project have been secured by Grantee.
- 6.03.2 45% of funds after Grantee provides evidence that the construction of the Project is 50% or more complete.
- 6.03.3 10% after completion of the Project and City's Project Manager indicates acceptance of the Project.

6.04 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds provided under this Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.05 In order to be reimbursed for work completed, Grantee shall submit to the City a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation (i.e. copies of paid itemized invoices) as requested by the City. Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans.

6.06 All requests for reimbursement shall be submitted through the City's Program Management Portal ("Portal"). Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.07 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Construction contract
- Construction contingencies
- Design contract
- Design contingencies

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Grantee's General Contractor and shown on the approved Plans
- Advertising

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

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 as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant 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 change in the financial condition of Grantee that may materially and adversely effect 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 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 with all other laws, regulations and ordinances related to the performance hereof.

XII. NO INDEMNIFICATION

12.01 Grantee and the City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the

remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

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. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended

documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

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. COOPERATION

19.01 Police Services are provided by the Grantee and the City in accordance with the Memorandum of Understanding between the City of San Antonio Police Department and Grantee's Department of Public Safety, dated October 11, 2002, or any successive agreements.

XX. ASSIGNMENTS

20.01 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.

XXI. SEVERABILITY OF PROVISIONS

21.01 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.

XXII. NON-WAIVER OF PERFORMANCE

22.01 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.

22.02 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.

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

XXIII. ENTIRE AGREEMENT

23.01 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.

XXIV. NOTICES

24.01 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: Director Capital Improvements Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With Copies to:

Director Parks and Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: John Strybos, Associate Vice Chancellor of Facilities
Alamo Community College District
201 W. Sheridan, Building 1
San Antonio, Texas 78204

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.

XXV. PARTIES BOUND

25.01 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.

XXVI. RELATIONSHIP OF PARTIES

26.01 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.

XXVII. TEXAS LAW TO APPLY

27.01 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.

XXVIII. GENDER

28.01 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.

XXIX. CAPTIONS

29.01 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.

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 _____, 20__.

CITY OF SAN ANTONIO

ALAMO COMMUNITY COLLEGE DISTRICT

By: _____
Sheryl Sculley
City Manager

By: *John W. Strybos* *10/10/08*
John Strybos
Associate Vice Chancellor of Facilities

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 44
Council Meeting Date: 11/6/2008
RFCA Tracking No: R-4057

DEPARTMENT: Parks & Recreation

DEPARTMENT HEAD: Xavier Urrutia

COUNCIL DISTRICT(S) IMPACTED:
Council District 4

SUBJECT:
Alamo Community College District Funding Agreement

SUMMARY:

This ordinance authorizes the execution of a Funding Agreement with Alamo Community College District (ACCD) for the expenditure of up to \$200,000.00 for the improvements to the Palo Alto College soccer field located in City Council District 4, a 2007-2012 Park Bond Program project.

BACKGROUND INFORMATION:

This ordinance will authorize a Funding Agreement with ACCD for the expenditure of up to \$200,000.00 for improvements to the Palo Alto College soccer field located at 1400 W. Villaret in City Council District 4. This agreement is for twenty-five (25) years and will expire in October 2033. This project allows for the City to again partner with ACCD to provide construction of field lighting, parking, a concession stand and restroom facilities at the Palo Alto College soccer field. The soccer field is currently available for public use and was initially constructed through a Joint Use and Participation Agreement between the City and ACCD which authorized reimbursement of up to \$250,000.00 in 2003-2007 Park Bond Funds. ACCD accepts full responsibility to manage and provide all of the activities and services necessary to complete this project. Under the terms of the Funding Agreement, the facility design and bond fund expenditures must be complete by June 31, 2009.

On May 12, 2007, San Antonio citizens approved the 2007-2012 Park Bond Program which included up to \$200,000.00 for improvements to the soccer field. The total cost of the project is estimated at \$400,000.00. The City will reimburse ACCD for approximately 50% of the total construction budget or a total of \$200,000.00, whichever is less.

The Capital Improvements Management Services (CIMS) Department will be responsible for administration of this Funding Agreement on behalf of the City until the completion of construction. Thereafter, the Parks and Recreation Department will monitor the Funding Agreement for the remaining term. ACCD is required, under the agreement, to provide the City with annual reports by January 31, of each year including details of previous year's activities, and description of maintenance activities from the previous year and planned maintenance for the upcoming year.

ISSUE:

Citizens approved \$200,000.00 in the 2007-2012 Park Bond Program for improvements to the Palo Alto College soccer field. This proposed agreement will provide up to \$200,000.00 to ACCD as part of the funding for the improvements to this voter approved project.

ALTERNATIVES:

Funds were approved in the 2007-2012 Park Bond Program for development of this facility. Any alternative to this project would require redirecting funds to a similar project within the existing 2007-2012 Park Bond Program, due to legal restrictions on the ability of the City to redirect these funds to other projects.

FISCAL IMPACT:

The 2007-2012 Park Bond Program includes \$200,000.00 in funding for improvements to the Palo Alto College soccer field. This project is listed and approved in the FY 2009-2014 Adopted Annual Capital Budget.

Alamo Community College District will be responsible for all development, operation, and maintenance costs associated with this project and there will be no fiscal impact to the General Fund.

RECOMMENDATION:

Staff recommends approval of this Funding Agreement with Alamo Community College District for the expenditure of up to \$200,000.00 for improvements of this voter approved facility located in City Council District 4.

The Discretionary Contracts Disclosure Form required by the Ethics ordinance is attached.

ATTACHMENT(S):

File Description	File Name
Alamo Community College District Funding Agreement	Alamo Community College District Funding Agreement.pdf
Alamo Community College District Discretionary Contracts Disclosure Form	Alamo Community College District Discretionary Contracts Disclosure Form.pdf
Voting Results	
Ordinance/Supplemental Documents	200811061002.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Xavier Urrutia Director (Interim) Parks & Recreation
Debbie Sittre Assistant Director Capital Improvements Management Services

APPROVED FOR COUNCIL CONSIDERATION:

A.J. Rodriguez Deputy City Manager