

AN ORDINANCE 2012-02-02-0071

AUTHORIZING THE NEGOTIATION AND EXECUTION OF CONTRACTS WITH BEXAR LAND TRUST, INC. AND THE NATURE CONSERVANCY IN AN AMOUNT NOT TO EXCEED \$2,500,000 FOR PROFESSIONAL SERVICES ASSOCIATED WITH PROPERTY ACQUISITION FOR THE 2010 PROPOSITION 1 EDWARDS AQUIFER PROTECTION PROGRAM.

* * * * *

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

SECTION 1. The city manager and her designee, severally, are authorized and directed to execute and deliver on behalf of the city contracts in substantially the form attached as **Attachment I**, which is incorporated for all purposes as if fully set forth. The city manager and her designee, severally, should consummate the transaction contemplated by the attached instrument according to its terms. They should further take all other actions necessary or convenient to effectuate the transaction, including agreeing to non-material changes to the approved form and executing all necessary or convenient ancillary instruments and agreements.

SECTION 2. Funding for this ordinance will be identified when work orders are issued. If funding for any work orders is not previously appropriated, funding will be identified and appropriated through subsequent City Council action. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

SECTION 3. Payment not to exceed the total of \$2,500,000.00 is authorized to be encumbered with a purchase order and made payable to the order of both Bexar Land Trust, Inc. dba Green Spaces Alliance of South Texas and/or The Nature Conservancy for real estate identification, negotiation, due diligence, and acquisition for the 2010 Proposition 1 Edwards Aquifer Protection Program. The combined payment for both vendors cannot exceed \$2,500,000 in total.

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 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

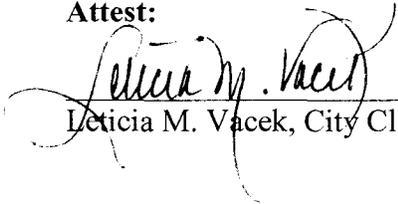
Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 2nd day of February 2012.

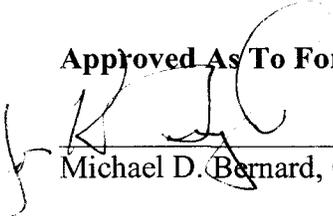

M A Y O R
Julián Castro

Attest:



Leticia M. Vacek, City Clerk

Approved As To Form:

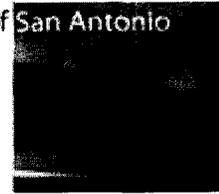


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 16

| Name: | 6, 7, 9, 10, 11, 12, 13, 14A, 14B, 14C, 14D, 14E, 14F, 16, 17, 18, 19, 20, 22A, 22B, 22C | | | | | | |
|---------------------|--|-------------|-----|-----|---------|--------|--------|
| Date: | 02/02/2012 | | | | | | |
| Time: | 10:31:09 AM | | | | | | |
| Vote Type: | Motion to Approve | | | | | | |
| Description: | An Ordinance authorizing the negotiation and execution of contracts with Bexar Land Trust, Inc. dba Green Spaces Alliance of South Texas and The Nature Conservancy in an amount not to exceed \$2,500,000.00 for professional services associated with approximately \$90,000,000.00 in property acquisition for the voter-approved 2010 sales tax funded Proposition 1 Edwards Aquifer Protection Program. [Peter Zanoni, Assistant City Manager; Mike Frisbie , Director, Capital Improvements Management Services] | | | | | | |
| Result: | Passed | | | | | | |
| Voter | Group | Not Present | Yea | Nay | Abstain | Motion | Second |
| Julián Castro | Mayor | | x | | | | |
| Diego Bernal | District 1 | | x | | | | |
| Ivy R. Taylor | District 2 | x | | | | | |
| Leticia Ozuna | District 3 | | x | | | | |
| Rey Saldaña | District 4 | | x | | | | |
| David Medina Jr. | District 5 | | x | | | | |
| Ray Lopez | District 6 | | x | | | x | |
| Cris Medina | District 7 | | x | | | | |
| W. Reed Williams | District 8 | | x | | | | |
| Elisa Chan | District 9 | | x | | | | x |
| Carlton Soules | District 10 | x | | | | | |

Attachment I

PROFESSIONAL SERVICES AGREEMENT FOR ASSISTANCE IN THE EDWARDS AQUIFER LAND PROTECTION PROGRAM

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City") acting by and through its City Manager or her designee, and ???????????? (hereinafter referred to as "Contractor"), by and through its President, both of which may be referred to herein collectively as the "Parties."

WHEREAS, the citizens of the City approved Proposition 1, commonly known as the Edwards Aquifer Land Protection Program (the "Program"), on November 2, 2010, for the protection of the Edwards Aquifer;

WHEREAS, Contractor is an organization dedicated to protecting and preserving natural resources and shares the City's goals of aquifer and water protection in furtherance of its mission for land, water, and wildlife preservation;

WHEREAS, Contractor has considerable experience with land conservation strategies, including conservation easements, and desires to contribute this expertise to the Program for maximizing its effectiveness and conservation achievements;

WHEREAS, the Parties desire to collaborate on the Program by entering this cooperative agreement for purposes of furthering their mutual goals for conservation;

NOW, THEREFORE, the Parties hereto agree to the contract provisions detailed below.

I. TERM

1.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence after execution by both parties and terminate upon acceptable completion of all tasks described herein.

II. SCOPE OF SERVICES

2.1 Contractor agrees to provide the services described in this Article II and shall receive the compensation described in Article III.

2.2 All work performed by Contractor hereunder shall be performed to the reasonable satisfaction of the Special Project Manager for the Program (hereinafter referred to as "Project Manager"). The City shall be under no obligation to pay for any work performed by Contractor that is not reasonably satisfactory to the Project Manager.

2.3 Contractor shall as an independent contractor, to the extent reasonably necessary under the circumstances:

- a. Work with the Project Manager and the City's appointed Conservation Advisory Board ("CAB") in the prioritization of properties for acquisition under the Program. This will include attendance at CAB meetings, planning meetings with the Project Manager, arranging site visits to project areas, coordinating land owner contacts, coordinating and presenting potential acquisitions and providing additional information and assistance to the Project Manager as reasonably needed;
- b. Work with the Project Manager in the City's efforts to acquire real property interests in the geographical priority sections as specified in the Scientific Evaluation Team GIS spatial model;
- c. Follow-up with property owners and initiate negotiations with interested landowners for the purchase of their properties, including entering into an option for purchase agreement between landowner and Contractor as an independent contractor. The Contractor retains the right to terminate any agreement with the land owners provided written notification is provided to the City prior to termination and the City has the opportunity to accept assignment of the agreement;
- d. Coordinate and conduct reasonable due diligence on the properties, which may include, but is not limited to, obtaining title commitments, appraisals, environmental assessments, surveys, and easement documentation reports (baseline surveys) in the case of conservation easements to be acquired, and sharing such information with the Project Manager for the City's independent review and analysis.

2.4 Contractor and City will cooperatively work together in selecting and contracting with outside legal counsel and other professionals for use in this program. The Project Manager and Contractor will both have reasonable access to outside legal counsel so selected.

2.5 A Notice of Interest for specific property acquisitions will be issued by the City prior to Contractor beginning the due diligence phase of the work, which notice shall be on a form acceptable to the Parties and describe the type of property, acquisition (fee simple or conservation easement), timing considerations, and direct costs to be reimbursed. Contractor has the sole discretion to determine whether it accepts the Notice of Interest.

2.6 Contractor can assign its option or purchase agreement to the City any time prior to closing. In addition, Contractor shall have the discretion, rather than assign its option or purchase agreement, to proceed to close with the landowner, and in a simultaneous closing between Contractor and the City, immediately convey the property to the City or other third party agreed upon by the City and Contractor. The City has the sole discretion and responsibility in determining whether it shall accept such assignment and close with the landowner or accept such conveyance of the property by Contractor in a simultaneous closing, but such decision shall be irrevocable upon approval of the transaction by the City Council.

2.7 Contractor will assist the City in leveraging Proposition One funding through state, federal, or other grant funds when possible.

III. COST RECOVERY

3.1 As further set forth in the Article III provisions below, City agrees to reimburse Contractor as follows:

- a. **INDIRECT COSTS:** For indirect costs by paying Contractor according to the following table:

| <i>Appraisal Amount*</i> | <i>Reimbursement Amount</i> |
|---------------------------|-----------------------------|
| <\$1,000,000 | \$35,000 |
| \$1,000,000 - \$1,999,999 | \$40,000 |
| \$2,000,000 - \$2,999,999 | \$50,000 |
| \$3,000,000 - \$3,999,999 | \$60,000 |
| \$4,000,000 - \$4,999,999 | \$65,000 |
| \$5,000,000 - \$7,499,999 | \$85,000 |
| \$7,500,000 - \$9,999,999 | \$100,000 |
| >\$10,000,000 | \$135,000 |

- * If there are multiple appraisals, for purposes of this contract, the Appraisal Amount will be the maximum purchase price approved by the Conservation Advisory Board.

- b. **DIRECT COSTS:** will be approved in the Notice of Interest or as otherwise authorized by the Project Manager and may include earnest money, option fees, appraisals, title insurance, surveys, environmental assessments, easement documentation reports (baseline surveys), legal fees and costs for outside legal counsel, and mapping. No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City, unless authorized by the Project Manager. Legal fees and costs for outside counsel shall not be reimbursed for amounts in excess of \$15,000 per transaction. Contractor must not incur legal fees chargeable to City except with written consent from City in the specific instance.

3.2 The City's obligation to reimburse direct costs will arise upon the City's issuance of a Notice of Interest, and direct costs shall be reimbursed by the City within 30 days of the City's receipt of an invoice for such costs.

3.3 The City's obligation to reimburse indirect costs will arise upon the City's decision to proceed in accordance with Section 2.6 hereof, and the City shall make payment of such indirect costs either (i) within forty-five (45) days after acceptance of an assignment of the option or purchase agreement from Contractor, or (ii) at the time of a simultaneous closing with Contractor, in consideration for the Contractor's assignment or conveyance to the City. If the City Council does not approve a transaction (whether an assignment by Contractor of a particular option or purchase agreement or a conveyance of the property by Contractor in a simultaneous closing), Contractor will not be reimbursed for indirect costs for such transaction.

3.4 The City shall not be obligated or liable under this Agreement to any third party, other than Contractor, for the payment of any monies or the provision of any goods or services hereunder except as approved in a Notice of Interest or as otherwise authorized by the Project Manager.

3.5 Notice: Contractor shall deliver all notices hereunder (including invoice for payment) to the City as follows:

Project Manager, Edwards Aquifer Protection Program, CIMS
P.O. Box 839966

San Antonio, TX 78283-3966
Tele. (210) 207-2815
Fax (210)207-7888

The City shall deliver all notices hereunder to Contractor as follows:

Bexar Land Trust, Inc, *d.b.a.* Green Spaces Alliance of South Texas

IV. OWNERSHIP OF DOCUMENTS

Any and all writings, documents, reports, findings, and information collected and/or produced by Contractor and for which City is required to reimburse Contractor under this Agreement (the "Property Information"), specifically including the GIS model and its supporting information, shall be the property of the City, and the City shall have the right to use them without restriction. Contractor may use the Property Information in furtherance of its activities under this program and its conservation efforts involving the Edwards Aquifer, but shall not otherwise use, copy or distribute the Property Information without written authorization from the Project Manager. This Property Information shall not include any immaterial information or internal correspondence of Contractor, any attorney-client or work-product privileged documents or information of Contractor, or any documents or information that Contractor is required by law or legal obligation to keep confidential.

V. RECORDS RETENTION

5.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all Property Information, and shall make such Property Information available to the City at its office at reasonable times and as reasonably requested during the Agreement period, including any extension or renewal hereof; and the record retention period established herein, for purposes of audit, inspection, examination, and snaking excerpts or copies of same by City and any of its authorized representatives.

5.2 Contractor shall retain any and all Property Information for a period of three (3) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, Contractor has been notified that there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the Property Information until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such Property Information at reasonable times, as reasonably requested by City, during said retention period. City may, at its election and sole cost, require Contractor to provide copies of said Property Information to City prior to, or at the conclusion of, said retention period.

5.3 Each party shall immediately notify the other party in the event a party receives any requests for information from a third party which pertain to the documentation and records referenced herein. Contractor and City will cooperate in processing and handling all such requests.

VI. TERMINATION

6.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article I, or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause. This Agreement may be terminated by City or Contractor upon delivery of written notice thereof to the other party, provided however that in such event, the City shall be responsible to reimburse Contractor for all direct costs otherwise payable hereunder and shall be obligated to complete all transactions that City has agreed to proceed upon in accordance with Section 2.6 hereof, and pay indirect cost reimbursement for such transactions.

6.3 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

6.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, of all Property Information, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article V. Any Property Information transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such Property Information, if requested.

6.5 Within ninety (90) calendar days of the effective date of completion, termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said ninety (90) calendar days shall negate any liability on the part of City and constitute a waiver by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

6.6 Upon the effective date of completion, expiration or termination of this Agreement, Contractor shall have no obligation to continue any work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

6.7 Termination not sole remedy. In no event shall either party's action of terminating this Agreement be deemed an election of such party's remedies, nor shall such termination limit, in any way, at law or at equity, such party's right to seek damages from or otherwise pursue the other party for any default hereunder or other action.

VII. INSURANCE

7.1 Contractor shall maintain during this Agreement liability insurance with limits not less than \$1,000,000.00 for bodily injury to or death of any one person, \$1,000,000.00 for any one occurrence for bodily injury to or death of one or more persons arising out of one occurrence, and \$500,000.00 per occurrence with respect to any property damage. If required by City, a copy of an insurance certificate from Contractor's agent or insurance broker must be submitted to City not later than ten (10) calendar days from the date of such request.

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

7.3 It is agreed that Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising from Contractor's activities under this Agreement.

VIII. INDEMNIFICATION

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

8.2 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

8.3 CONTRACTOR shall advise the CITY in writing within 2 business days of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of contractor's activities under this contract.

IX. ASSIGNMENT AND SUBCONTRACTING

9.1 Contractor shall supply qualified personnel as may be necessary to complete the work under this Agreement.

9.2 Before utilizing any subcontractor to perform any part of the work identified in this Agreement, Contractor shall seek written authorization from the Project Manager, who shall approve or reject such a request in Project Manager's reasonable discretion, if not provided in the Notice of Interest. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor or employee of Contractor, for performance of services or payment of fees unless authorized by the Project Manager. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

9.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties

hereunder, by transfer, by subcontracting or any other means, without the consent of the Project Manager. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

9.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VI, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

X. INDEPENDENT CONTRACTOR; NO AGENCY

Contractor and City acknowledge, covenant and agree that Contractor is an independent contractor with City and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor is acting on its own behalf and has no authority to bind the City.

The purpose and intention of this Agreement are to collaborate on the City acquiring fee title or conservation-easement rights in real property through options, purchase contracts, or assignments or conveyances. Contractor's role is exclusively that of an independent contractor. Provisions in this Agreement for maintenance of insurance for the benefit of the City or Indemnification of the City, or similar provisions of this Agreement, in no way indicate that Contractor is not an independent contractor.

This Agreement is not intended to restrict Contractor in its conservation efforts. Without limiting the foregoing, Contractor may acquire, sell, or otherwise dispose of any property through assignment of options or purchase contracts at its sole discretion, except those properties that become subject to this Agreement. Further, Contractor may continue to work with other persons and entities such as the Texas Parks and Wildlife Department, the San Antonio Water System, the Edwards Aquifer Authority, and other city or county governments as well as private conservation buyers with respect to acquiring, selling, or transferring property desirable for protecting the Edwards Aquifer system.

XI. CONFLICT OF INTEREST

11.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or

any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

11.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XII. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor.

XIII. SEVERABILITY

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.

XIV. QUALIFICATIONS

Each party warrants and certifies to the other that it is qualified and has the capabilities to comply with its obligations hereunder.

XV. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVI. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not 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. In case of City, such changes must be approved by the Project Manager, as described in Article XII. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVII. LAW APPLICABLE

17.1 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.

17.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XVIII. LEGAL AUTHORITY

The signer of this Agreement for each party represents, warrants, assures and guarantees to the other party that he/she has full legal authority to execute this Agreement on behalf of the respective party and to bind said party to all of the terms, conditions, provisions and obligations herein contained.

XIX. PARTIES BOUND

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

XX. SECTION HEADING

The section headings 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.

XXI. ADMINISTRATIVE CONSENTS

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

XXII. ENTIRE AGREEMENT

This Agreement, together with its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain 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 hereto, and duly executed by the parties, in accordance with Article XII.

In Witness Whereof, the parties have caused their representatives to set their hands as of the later of the dates of the signatures below:

City of San Antonio,
a Texas municipal corporation

???????

By: _____

By: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved As To Form:

City Attorney