

AN ORDINANCE

2009-05-14-0393

AUTHORIZING A PAYMENT IN LIEU OF TAXES (PILOT) AGREEMENT WITH THE SAN ANTONIO HOUSING AUTHORITY (SAHA) IN THE AMOUNT OF \$650,000.00 FOR THE ROSEMONT AT PLEASANTON PROJECT; AND AUTHORIZING A MEMORANDUM OF AGREEMENT WITH THE SAN ANTONIO DEVELOPMENT AGENCY (SADA) IN THE AMOUNT OF \$650,000.00 TO PERFORM CERTAIN ACTIVITIES RELATED TO SLUM CLEARANCE, REDEVELOPMENT, REHABILITATION AND CONSERVATION.

* * * * *

WHEREAS, the Urban Renewal Agency of the City of San Antonio aka the San Antonio Development Agency (SADA) was created in 1957 to carry out urban renewal activities to prevent deterioration and decay and rid the City of urban blight and slum; and

WHEREAS, SADA created the San Antonio Affordable Housing, Inc. (SAAH) as an Internal Revenue Code Section 501(c)(3) non-profit corporation to help with its activities; and

WHEREAS, in 2005, SAAH entered a multi-partnership agreement as general partner for TX Pleasanton Housing, L.P., a Texas limited partnership (the "Partnership") to construct a two hundred fifty (250) unit multi-family affordable housing project known as Rosemont at Pleasanton (the "Project") located in the City's Southside district; and

WHEREAS, SAAH subsequently transferred its interest in the Partnership to the San Antonio Housing Authority (SAHA) in the amount of \$650,000.00; and

WHEREAS, City desires to enter into a Payment in Lieu of Taxes (PILOT) Agreement in the amount of \$650,000.00 with SAHA for the Project; and

WHEREAS, the City also desires to enter into a Memorandum of Agreement with SADA in the amount of \$650,000.00 to perform urban renewal activities; and

WHEREAS, it is the desire of City Council to approve the PILOT Agreement with SAHA and the Memorandum of Agreement with SADA; **NOW THEREFORE:**

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

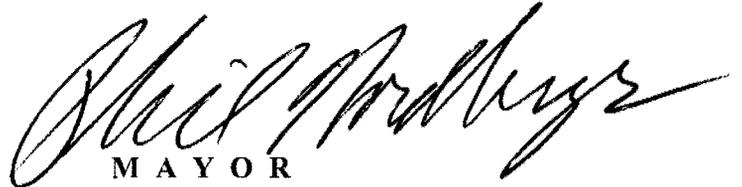
SECTION 1. A Payment in Lieu of Taxes (PILOT) Agreement with the San Antonio Housing Authority (SAHA) in the amount of \$650,000.00 and a Memorandum of Agreement (MOA) with the Urban Renewal Agency of the City of San Antonio aka the San Antonio Development Agency (SADA) in the amount of \$650,000.00 to perform certain activities related to slum clearance redevelopment, rehabilitation and conservation is hereby authorized. A copy of the PILOT Agreement and the MOA in substantially final form are attached hereto and incorporated herein for all purposes as **Attachments I and II**.

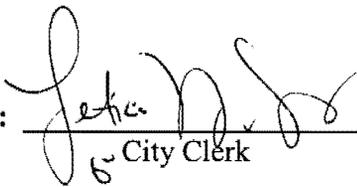
SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP

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 3. This ordinance shall be effective on and after May 24, 2009.

PASSED AND APPROVED this 14th day of May, 2009.


MAYOR

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

Agenda Item:	31 (in consent vote: 10, 12, 13, 14, 15A, 15B, 17, 19, 21, 22, 23, 27, 28, 29A, 29B, 31, 32, 33, 34, 35)						
Date:	05/14/2009						
Time:	05:56:40 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a Payment in Lieu of Taxes (PILOT) Agreement with the San Antonio Housing Authority (SAHA) in the amount of \$650,000.00 for the Rosemont at Pleasanton Project; and authorizing a Memorandum of Agreement with the San Antonio Development Agency (SADA) in the amount of \$650,000.00 to perform certain activities related to slum clearance, redevelopment, rehabilitation and conservation. [T.C. Broadnax, Assistant City Manager; David D. Garza, Director, Housing and Neighborhood Services]						
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				

ATTACHMENT I

PAYMENT IN LIEU OF TAXES ("PILOT") FUNDING AGREEMENT

THIS FUNDING AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement"), dated April 10, 2009, is made by and among the CITY OF SAN ANTONIO, TEXAS, a Texas municipal corporation ("CITY"), and the SAN ANTONIO HOUSING AUTHORITY ("SAHA").

RECITALS

TX Pleasanton Housing, L.P., a Texas limited partnership (the "Partnership") constructed a two hundred and fifty (250) unit multi-family affordable housing project known as Rosemont at Pleasanton (the "Project") on certain real property located in San Antonio, Texas (the "Property"), which is more particularly described below.

Since June 14, 2006 and during the construction of the Project, San Antonio Affordable Housing, Inc. ("SAAH") was the sole member of TX Pleasanton Development, LLC ("TX-GP") as the General Partner, owning 0.01% of the partnership interests in the Partnership. After completion of construction of the Project, it was agreed by and among the parties to that certain Rosemont at Pleasanton Second Master Agreement ("Agreement"), dated April 16, 2008 that SAAH would withdraw as the sole member of the General Partner and transfer 100% of its interests to Las Varas Public Facility Corporation ("LVPC") by and through that certain Assignment of Membership Interest, dated April 24, 2008, by and between SAAH and LVPC (the "Assignment").

In addition, it was agreed by the parties to the Agreement that fee simple ownership of the Property, consisting of all of Lot 2 and Lot 3, New City Block 11151, City of San Antonio, Texas, Rosemont at University Park, Volume 9564, Page 99 of the deed and plat records of Bexar County, Texas, would be transferred to LVPC and leased back to the Partnership pursuant to a long-term ground lease described in the Agreement, in order for the Partnership to obtain a 100% ad valorem tax exemption.

SAAH was created by the San Antonio Development Agency ("SADA") pursuant to Chapter 373 of the Texas Local Government Code as an instrumentality of SADA to further prevent slum and urban blight in the city of San Antonio.

LVPC is a public facility corporation created under Chapter 392 of the Texas local government Code an instrumentality of the SAHA.

The Project is a 250 unit apartment complex financed with low income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986.

The Property constitutes a "public facility" pursuant to Chapter 303.002 (7) of the Texas Local Government Code, and the Partnership's plan for the use of the Property constitutes a "housing project" as that term is defined by the Section 392.002 (6) (b) of the Texas Local

Government Code, and public property used for public purposes may be exempted from taxation pursuant to Article VIII, Section 2 of the Texas Constitution.

The CITY's involvement with the conveyance of the Project to LVPFC has caused it and SAHA to recognize that there are costs to the City for providing services to SAHA's various properties that are tax-exempt, including those owned by LVPFC, such as the Project. Accordingly, SAHA has agreed to make the PILOT payments to CITY as described herein.

The CITY has agreed to accept said PILOT payments and intends to partner with SADA and SAAH to improve the overall conditions of the City of San Antonio with these PILOT payments by working with them to develop viable urban communities, and providing decent housing and a suitable living environment for persons of low and moderate income.

AGREEMENT

1. Payments: SAHA shall make PILOT payments to the CITY in the total amount of Six Hundred and Fifty Thousand Dollars (\$650,000.00).

(a) Payments will be made by SAHA in the following manner:

- First payment in the amount of \$75,000.00 shall be due immediately upon SAHA Board approval and execution of this PILOT Agreement, which said approval and execution shall not be unreasonably withheld or delayed.
- Second payment in the amount of \$75,000.00 shall be due on June 30, 2009.
- Remaining balance shall be paid in monthly installments of \$20,833.33 for 24 months on the first day of every month beginning January 1, 2010 and every first day of every month thereafter until of the whole of said \$650,000.00 has been duly paid to the CITY.

(b) Payment shall be made to the City of San Antonio at the following address:

City of San Antonio
Financial Services Division
Revenue Collections
c/o San Antonio Development Agency
P.O. Box 839975
San Antonio, Texas 78283-3975

2. Notices: All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another national reputable private courier service for next business day delivery to the intended addressee at its address set forth below signature requested at delivery or at such other address as may be designated by such party as herein

provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private nationally recognized courier service, or five (5) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. Service of any notice required by Texas Property Code Section 51.002, as the same may be amended, shall be effective when the requirements to that statute are met. The following are the addresses of CITY and BORROWER for all purposes in connection herewith:

City of San Antonio
Housing and Neighborhood Services Department
1400 S. Flores Street
San Antonio, Texas 78204-1617
Attention: Director

With a copy to:

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

San Antonio Housing Authority
818 S. Flores Street
San Antonio, Texas 78204
Attention: President

With a copy to:

Fulbright & Jaworski L.L.P.
300 Convent Street, Suite 2200
San Antonio, Texas 78205
Attn: James P. Plummer

By giving to the other party hereto at least ten (10) days' prior, written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address.

3. Parties Bound: This PILOT Agreement shall inure to the benefit of and shall be binding upon the CITY, SAHA and their respective successors and assigns. There shall be no assignment of this PILOT Agreement except with consent of the other party, which consent shall not be unreasonably withheld.
4. Gender: Words of gender used in this PILOT Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.
5. Entire Agreement: This PILOT 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 PILOT 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.
6. Relationship of Parties: 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.
7. Texas Law to Apply: THIS PILOT 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.
8. Enforceability: If any provision of this PILOT Agreement or its application is held invalid or unenforceable to any extent, the remainder of this PILOT Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.
9. Counterparts: This PILOT Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.
10. Authority: Each of the parties individually represents and warrants that the execution, delivery and performance of this PILOT Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this PILOT Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties to this PILOT Agreement have caused this PILOT Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

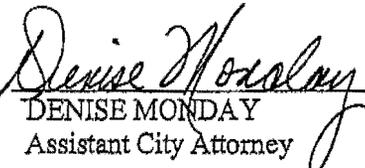
CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
T.C. BROADNAX
Title: Assistant City Manager

**HOUSING AUTHORITY
OF THE CITY OF SAN ANTONIO, TEXAS**

By: _____
ED HINOJOSA, JR.
Title: Interim President & CEO

APPROVED AS TO FORM:

By:  _____
DENISE MONDAY
Assistant City Attorney

ATTACHMENT II

MEMORANDUM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This MEMORANDUM OF AGREEMENT is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Assistant City Manager pursuant to Ordinance No. _____ dated May 14, 2009 and SAN ANTONIO DEVELOPMENT AGENCY. (hereinafter referred to as "SADA"), a body corporate and politic, acting by and through its Board Chair, hereto duly authorized.

WHEREAS, TX Pleasanton Housing, L.P., a Texas limited partnership (the "Partnership") constructed a two hundred fifty (250) unit multi-family affordable housing project known as Rosemont at Pleasanton (the "Project"); and

WHEREAS, since June 14, 2006 and during the construction of the Project, San Antonio Affordable Housing, Inc. ("SAAH") was the sole member of TX Pleasanton Development, LLC ("TX-GP") as the General Partner, owning 0.01% of the partnership interests in the Partnership. After completion of construction of the Project, it was agreed by and among the parties to that certain Rosemont at Pleasanton Second Master Agreement ("Agreement"), dated April 16, 2008 that SAAH would withdraw as the sole member of the General Partner and transfer 100% of its interests to Las Varas Public Facility Corporation ("LVPFC") by and through that certain Assignment of Membership Interest, dated April 24, 2008, by and between SAAH and LVPFC (the "Assignment"); and

WHEREAS, SAAH was created by the San Antonio Development Agency ("SADA") pursuant to Chapter 373 of the Texas Local Government Code as an instrumentality of SADA to further prevent slum and urban blight in the city of San Antonio; and

WHEREAS, the CITY's involvement with the conveyance of the Project to LVPFC has caused it and SAHA to recognize that there are costs to the City for providing services to SAHA's various properties that are tax-exempt, including those owned by LVPFC, such as the Project; and

WHEREAS, SAHA has agreed to make the Payments In Lieu Of Taxes ("PILOT Payments") to CITY for its services to SAHA's various properties, including the Project; and

WHEREAS, CITY desires to reinvest said PILOT payments into activities that address slum and blight clearance, redevelopment, rehabilitation, conservation and other activities to prevent deterioration and decay; and

WHEREAS, to that end, CITY desires to fund these activities through SADA; **NOW THEREFORE**:

In consideration of the mutual covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, 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

1.1 Except as otherwise provided for pursuant to the provisions hereof, this MEMORANDUM OF AGREEMENT shall commence May 24, 2009 and shall terminate on December 31, 2011, subject to renewal for one (1) optional one-year term at a mutually agreed upon contract amount and contingent upon City Council approval for the renewal term.

II. RESPONSIBILITIES

2.1 It is expressly understood by CITY and SADA that the purpose of this MEMORANDUM OF AGREEMENT is to formalize the roles and responsibilities of the CITY and SADA, for the purpose of assisting with activities to address slum and blight clearance, redevelopment, rehabilitation, conservation and other activities to prevent deterioration and decay for the term outlined in Article 1.

2.2 Unless written notification by SADA to the contrary is received, SADA's Board of Directors shall be responsible for the management of all contractual matters pertaining to this MEMORANDUM OF AGREEMENT. The CITY, or its representative, shall communicate with the Board Chair or designee, who shall be the contact for SADA with regard to ongoing daily business communication contact.

2.3 City's Assistant City Manager responsible for oversight of the City's Housing and Neighborhood Services Department or his designate shall be CITY's representative responsible for the administration of this MEMORANDUM OF AGREEMENT.

2.4 Communications between CITY and SADA shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.1 SADA shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting SADA's operations pursuant to this MEMORANDUM OF AGREEMENT.

IV. LEGAL AUTHORITY

4.1 SADA 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 MEMORANDUM OF AGREEMENT and to perform the responsibilities herein required.

4.2 The signer of this MEMORANDUM OF AGREEMENT for SADA represents, warrants, assures and guarantees that he or she has full legal authority to execute this MEMORANDUM OF AGREEMENT on behalf of SADA and to bind SADA to all terms, performances and provisions herein contained.

4.3 In the event that a dispute arises as to the legal authority to enter into this MEMORANDUM OF AGREEMENT of either SADA or the person signing on behalf of SADA, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this MEMORANDUM OF AGREEMENT.

V. PERFORMANCE BY CITY

5.1 CITY, in accordance and compliance with the terms, provisions and requirements of this MEMORANDUM OF AGREEMENT, shall provide funding for the activities and services set forth below.

5.2 It is expressly understood by CITY and SADA that this MEMORANDUM OF AGREEMENT in no way obligates the CITY to assume any business, project or contract of SADA, nor shall the CITY be liable to SADA or to third parties in connection with said business, project or contract.

VI. PERFORMANCE BY SADA

6.1 As consideration for the funding to SADA, SADA shall perform the following:

- (A) Address slum clearance, redevelopment, rehabilitation, conservation and other activities to prevent deterioration and decay.
- (B) Implement the Real Property Disposition Plan goals.
- (C) Complete the Historic Gardens Project.
- (D) Perform activities associated with the implementation of the Growth Management Plan.
- (E) Perform activities associated with land banking.
- (F) Implement goals outlined in approved Urban Renewal Plans.

6.2 Notwithstanding any other provision of this MEMORANDUM OF AGREEMENT, the total of all payments and other obligations made or incurred by SADA hereunder shall not exceed the sum of Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00). It is expressly understood and agreed by CITY and SADA that CITY's obligations to provide funding under this Article are contingent upon the actual receipt of funds from SAHA. In the event SAHA, during the term of this MEMORANDUM OF AGREEMENT, does not pay the CITY the required funding, CITY shall be under no obligation to SADA to provide funding.

VII. PERFORMANCE EVALUATION

7.1 SADA shall provide the CITY with quarterly performance reviews. SADA Board of Commissioners shall provide advisory guidance in order to facilitate successful performance of the duties set forth in the Work Statement and in accordance with the organization's mission.

VIII. ACCESSIBILITY OF RECORDS

8.1 At any reasonable time during business hours on Business Days and as often as CITY may deem necessary, SADA shall make all of its records 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. SADA's records shall include, but shall not be limited to, the following: payroll, personnel and employment records, contracts, and invoices.

IX. INSURANCE

9.1 Prior to the commencement of any work under this MEMORANDUM OF AGREEMENT, SADA shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Housing and Neighborhood Services Department. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf.

9.2 SADA's financial integrity is of interest to the CITY; therefore, SADA shall obtain and maintain in full force and effect for the duration of this MEMORANDUM OF AGREEMENT, and any extension hereof, at SADA's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNTS
1. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability

c. Products/completed operations d. Personal Injury e. Contractual Liability	Coverage
2. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
3. Directors and Officers Liability	\$1,000,000
4. Crime Coverage	\$ 100,000

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

X. INDEMNIFICATION

10.1 SADA covenants and agrees to **FULLY INDEMNIFY, and HOLD HARMLESS**, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to SADA's activities under this MEMORANDUM OF AGREEMENT, including any acts or omissions of SADA, any agent, officer, director, representative, employee, consultant or subcontractor of SADA, and their respective officers, agents, employees, directors and representatives while in the

exercise of performance of the rights or duties under this MEMORANDUM OF AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS MEMORANDUM OF AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SADA shall promptly advise the CITY in writing of any claim or demand against the CITY or SADA known to SADA related to or arising out of SADA's activities under this MEMORANDUM OF AGREEMENT and shall see to the investigation of and defense of such claim or demand at SADA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SADA of any of its obligations under this paragraph.

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

XI. CONFLICT OF INTEREST

11.1 SADA acknowledges that it is informed that 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 "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 subcontractor on a City contract, a partner or a parent or subsidiary business entity.

11.2 SADA warrants and certifies, and this MEMORANDUM OF AGREEMENT is made in reliance thereon, that no City officer or employee nor any spouse, parent, child sibling or first-degree relative of a City officer or employee 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). SADA further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

11.3 SADA covenants that neither it nor any member of its' governing bodies 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 MEMORANDUM OF AGREEMENT. SADA further covenants that in the performance of this MEMORANDUM OF AGREEMENT, no persons having such interest shall be employed or appointed as a member of its' governing bodies or of its' staff.

11.4 SADA further covenants that no member of its' governing bodies 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.

XII. MEETINGS

12.1 During the term of this MEMORANDUM OF AGREEMENT, SADA shall cause to be delivered to CITY copies of all notices of meetings of its governing body and/or committees. Said copies of notices shall set forth the time and place of each meeting, shall be delivered to CITY no later than five (5) business days prior to such meeting, so as to give CITY adequate notice thereof and shall include therein an agenda and a brief description of the matters to be discussed thereat.

12.2 SADA understands and agrees that CITY representatives shall be afforded access to all Board of Directors' meetings.

12.3 During the term of this MEMORANDUM OF AGREEMENT, CITY shall continue to provide staff assistance to SADA's Board of Directors, including the posting and recordation of all notices of meetings, preparation of minutes, resolutions and other governing documents to be reviewed and approved by the Board of Directors.

12.4 Approved minutes of all meetings of SADA's governing body shall be submitted to CITY within thirty (30) working days of approval.

XIII. CHANGES AND AMENDMENTS

13.1 Except when the terms of this MEMORANDUM OF AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and SADA.

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

XIV. TERMINATION

14.1 "Termination" of this MEMORANDUM OF AGREEMENT shall mean termination by expiration of the MEMORANDUM OF AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

14.2 CITY may terminate this MEMORANDUM OF AGREEMENT for any of the following reasons:

- (A) Neglect or failure by SADA to perform or observe any of the terms, conditions, covenants or guarantees of this MEMORANDUM OF AGREEMENT or of any written contract or amendment between CITY and SADA; and
- (B) Inability by SADA to conform to changes in local, state and federal rules, regulations and laws as provided for in Article III and in paragraph number 13.2 of this MEMORANDUM OF AGREEMENT; and
- (C) Violation by SADA of any rule, regulation or law to which SADA is bound or shall be bound under the terms of this MEMORANDUM OF AGREEMENT.

14.3 CITY may terminate this MEMORANDUM OF AGREEMENT for convenience at any time after which SADA shall be reimbursed a pro rata share of any advance funding provided by SADA to CITY based upon the value of the services performed under this MEMORANDUM OF AGREEMENT as of the effective date of termination.

14.4 Upon a decision to terminate this MEMORANDUM OF AGREEMENT by CITY, written notice of such, and the effective date thereof, shall be immediately provided to SADA.

14.5 Upon receipt of notice to terminate, SADA shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this MEMORANDUM OF AGREEMENT. To this effect, CITY shall not be liable to SADA or SADA's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination.

XV. NOTIFICATION OF ACTION BROUGHT

15.1 In the event that any claim, demand, suit, proceeding, cause of action or other action (hereinafter collectively referred to as "claim") is made or brought against SADA, SADA shall give written notice thereof to CITY within two (2) working days after itself being notified. SADA's notice to CITY shall state the date and hour of notification to SADA of the claim; the

names and addresses of those instituting or threatening to institute the claim, the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XX of this MEMORANDUM OF AGREEMENT.

XVI. ASSIGNMENTS

16.1 SADA shall not transfer, pledge or otherwise assign this MEMORANDUM OF 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.

XVII. SEVERABILITY OF PROVISIONS

17.1 If any clause or provision of this MEMORANDUM OF 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 MEMORANDUM OF 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 MEMORANDUM OF AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the MEMORANDUM OF 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.

XVIII. NON-WAIVER OF PERFORMANCE

18.1 No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this MEMORANDUM OF 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 CITY to insist in any one or more cases upon the strict performance of any of the covenants of this MEMORANDUM OF 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 MEMORANDUM OF AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

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

18.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

XIX. ENTIRE AGREEMENT

19.1 This MEMORANDUM OF 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 MEMORANDUM OF AGREEMENT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the parties.

XX. NOTICES

20.1 For purposes of this MEMORANDUM OF 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:

T.C. Broadnax, Assistant City Manager
City Manager's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

SADA:

1400 S. Flores Street
San Antonio, TX 78204-1617
Attention: Chair, Board of Commissioners

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

XXI. PARTIES BOUND

21.1 THIS MEMORANDUM OF 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.

XXII. GENDER

22.1 Words of gender used in this MEMORANDUM OF AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. RELATIONSHIP OF PARTIES

23.1 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.

XXIV. VENUE AND GOVERNING LAW

24.1 THIS MEMORANDUM OF AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS MEMORANDUM OF AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS.

24.2 ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

XXV. CAPTIONS

25.1 The captions contained in this MEMORANDUM OF AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this MEMORANDUM OF AGREEMENT.

EXECUTED this the _____ day of _____, 2009.

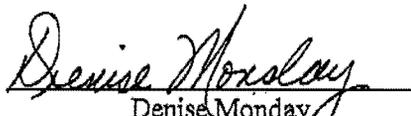
CITY OF SAN ANTONIO

SAN ANTONIO DEVELOPMENT AGENCY

By: _____
T.C. Broadnax
Title: Assistant City Manager

By: _____
Peter Zaroni
Title: Board Chair, Board of Directors

APPROVED AS TO FORM ONLY:


Denise Monday
Assistant City Attorney