SW/vv
10/30/14
Item #25

AN ORDINANCE 2014-10-30-0835

AUTHORIZING AN AMENDMENT TO THE EXISTING LANDA GARDENS MASTER PLAN AGREEMENT WITH THE LANDA GARDENS CONSERVANCY.

* * * * *

WHEREAS, the Landa Gardens Conservancy (LGC) was established as a 501(c) (3) non-profit in August 2004 for the purpose of improving the grounds of the Landa Branch Library (233 Bushnell); and

WHEREAS, shortly thereafter, the LGC commissioned a Landa Gardens Master Plan which provided for the creation of user friendly spaces, landscaped bed, improved lighting, an irrigation system, additional and improved parking, age-specific playgrounds and construction of a pavilion; and

WHEREAS, in August 2005, the San Antonio Public Library Board of Trustees approved the Master Plan and Pavilion and the Historic and Design Review Commission approved the Pavilion (September 2005) and Master Plan (November 2005); and

WHEREAS, in order to facilitate the construction of improvements outlined in the Master Plan, City Council authorized an agreement with the LGC on May 18, 2006, pursuant to Ordinance 2006-05-18-0598; and

WHEREAS, the Library Board of Trustees approved the agreement in April 2006; and

WHEREAS, the Landa Gardens Conservancy has invested approximately $1.5 million since 2006 in capital improvements and ongoing maintenance of the grounds, the playground and parking lot of the Landa Branch Library; and

WHEREAS, in April 2009, the San Antonio Public Library formally acknowledged and accepted the improvements made to the grounds of the Landa Branch Library by the Landa Gardens Conservancy; and

WHEREAS, in May 2014, the Landa Gardens Conservancy and the San Antonio Public Library mutually agreed to amend the agreement as the capital improvements outlined in the Master Plan have now been implemented and the day-to-day maintenance of the Landa Gardens have been established; **NOW THEREFORE:**

SW/vv
10/30/14
Item #25

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 San Antonio Public Library or his designee, is authorized to execute an amendment to the existing Landa Gardens Master Plan Agreement with the Landa Gardens Conservancy. A copy of the amendment is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. Funding in the amount of $15,000.00 for this ordinance is available for Fund 11001000, Cost Center 0404010011 and General Ledger 5204050, as part of the Fiscal Year 2015 Budget.

SECTION 3. Payment not to exceed the budgeted amount is authorized to the Landa Gardens Conservancy and should be encumbered with a purchase order.

SECTION 4. Future funding through the renewal terms of this agreement is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 5. 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 6. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of October, 2014.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Robert F. Greenblum, City Attorney

Agenda Item:	**25 (in consent vote: 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 31A, 31B)**
Date:	10/30/2014
Time:	02:38:40 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing an amendment to the existing Landa Gardens Master Plan Agreement with the Landa Gardens Conservancy. [Gloria Hurtado, Assistant City Manager; Ramiro Salazar, Director, Public Library]
Result:	Passed

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

Attachment I

AMENDED
AGREEMENT

This Amended Agreement ("Agreement") dated as of the _____day of _____, 2014 (the "Effective Date"), is made and entered into by and between the LANDA GARDENS CONSERVANCY ("LGC"), a Texas non-profit corporation, the SAN ANTONIO PUBLIC LIBRARY ("Library"), a Department of the CITY OF SAN ANTONIO ("City"), a Texas political subdivision and home-rule municipality of the State of Texas, acting by and through the Board of Trustees of the Library ("Board") and the City Manager of the CITY OF SAN ANTONIO pursuant to Ordinance No. 2014-_____ (the "Ordinance") adopted by the City Council of the City ("City Council") on _____ ,
2014.

WITNESSETH:

WHEREAS, Library owns that certain real property (the "Property") and all improvements thereon (the Property, together with all improvements currently located thereon is referred to herein as the "Premises"), known as Landa Library, located at 233 Bushnell, San Antonio, Bexar County, Texas, which includes the approximately five acres that surround the Landa Library, the Valero Energy Corporation Pavilion, and the playground area, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes ("Grounds"). The Grounds shall not include Landa Library or the attached buildings, or any other structure or item that LGC, Library, City and Board exclude from this Agreement either herein or by amendment to this Agreement;

WHEREAS, LGC has done significant work enhancing the Grounds by developing and implementing a master planned project known as Landa Gardens. The Master Plan for Landa Gardens is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes, and includes, but is not limited to, the Valero Energy Corporation Pavilion (such Valero Energy Corporation Pavilion being more particularly described on Exhibit "C" attached hereto and incorporated herein by reference for all purposes), walking paths, a community garden, an irrigation system, lighting, landscaped beds, and reconfigured parking areas and driveway (the "Master Plan," as may be amended from time to time);

WHEREAS, LGC has also funded and had constructed a new playground on the Grounds;

WHEREAS, LGC desires to continue supporting the maintenance of the many improvements it has made to the Grounds;

WHEREAS, Library desires that the Grounds be fully utilized for the enjoyment of the community;

WHEREAS, Library acknowledges the public benefit it has received by the

completion of Landa Gardens;

WHEREAS, this Amended Agreement is a restatement and clarification of the intent of the Parties contained in the original Agreement entered into pursuant to Ordinance No. 2006-05-18-0598 (the "Ordinance") adopted by the City Council of the City ("City Council") on May 18th, 2006.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for good, fair and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by LGC, Library, City, Board and City Manager; agree as follows:

1. The Parties hereto acknowledge and agree that LGC has constructed Landa Gardens in full compliance with the terms and conditions of the Original Agreement and this Amended Agreement.

2. All maintenance for Landa Gardens will be subject to the control and regulation of the Library Director in order to minimize the disruption of the normal operations of Landa Library.

3. City shall maintain insurance for (or self-insure) the Grounds as part of its regular insurance program.

4. Library understands and agrees that LGC has acknowledged its donors by having small plaques appropriately placed throughout Landa Gardens and a large permanent plaque placed in or on the Landa Library in an appropriate place. The size, design and placement of any future acknowledgement plaques for donors is subject to the approval of the Library Director and any applicable City boards and commissions.

5. LGC will continue to raise money for a Landa Gardens endowment for the continued maintenance of Landa Gardens. These funds will be managed by LGC and spent at the discretion of the LGC, provided, however, that on an annual basis LGC will provide to the Library Director an annual maintenance schedule.

6. Any future projects or improvements involving Landa Gardens, beyond ordinary maintenance, shall be subject to the approval of the Board. .

7. For the term of this Agreement, LGC agrees to maintain the sprinkler system and keep it in good operating condition. The LGC will maintain the landscaping improvements made on the Grounds. This includes normal cutting, pruning and trimming of grass and shrubs, replacing dead or diseased plants, and fertilizing. The scheduling of all such maintenance shall be coordinated with the Library to avoid any disruptions to the operations of the Landa Library. If the Library Director determines that there is a maintenance issue that LGC is not addressing, the Library Director shall send written or electronic notice of the requested maintenance to the LGC President and LGC shall have thirty (30) days to perform the requested maintenance or otherwise agree with the Library concerning the implementation of the requested maintenance. If LGC does not perform the requested maintenance or otherwise agree

with Library concerning the implementation of the requested maintenance, Library shall then proceed to undertake the requested maintenance. If the Library deems the maintenance an emergency, the Library shall notify LGC immediately and consult with LGC as to a resolution of the problem. Both Parties agree to work together to resolve any maintenance issues that fall within the parameters of this paragraph.

8. Library agrees to provide water to the Grounds for irrigation use subject to City water conservation policies as adopted from time to time. Library shall pay for any utilities provided to the Grounds.

9. LGC agrees to pursue water conservation measures to reduce water consumption by utilizing drip irrigation and drought resistant plans and shrubbery, as replacement is deemed prudent.

10. Library agrees to keep the grounds clean at all times by picking up trash, emptying trash receptacles, removing graffiti, replacing light bulbs, and keeping the Grounds clean and tidy to a reasonable standard as determined by Library.

11. In addition to the paying for the water and other utility costs associated with operation and maintenance of the Grounds, the City shall, subject to the City's normal annual budgeting and appropriations process, contribute up to $15,000.00 per City fiscal year towards the cost of maintaining the Grounds by reimbursing LGC 50% of documented costs spent by LGC on such maintenance. LGC shall annually submit a request for reimbursement to City with copies of all supporting documentation including applicable invoices from third party vendors. City shall reimburse such costs as expeditiously as possible but in no case shall take longer than 90 days after receipt of the request for reimbursement. Said funds shall be used to supplement any funds provided by LGC for the Grounds.

12. All contractors that LGC directly contracts with for work on the Grounds, will be required to carry insurance. The type and amount of insurance required for the contractors will be the same as LGC is required to purchase hereunder, except that the contractors that are performing routine maintenance will only be required to carry insurance in an amount that is equal to the amount of the contract under which the work is performed.

13. LGC agrees that it shall purchase insurance in an amount specified in Texas Charitable Immunity and Liability statute, Texas Civil Practice and Remedies Code, Section 84.007.

14. At no time shall LGC cause, permit or allow any liens, leases, pledges or other encumbrances to be placed on or attached to the buildings or the Property, nor permit or allow any liens, leases, pledges or other encumbrances to be attached to any of the funds it obtains for the project.

15. LGC agrees that it shall continue to maintain its 501(c)(3) non-profit status during the term of this Agreement.

16. It is the sole responsibility and obligation of LGC to maintain adequate records and accounting of all funds it receives in connection with Landa Gardens. LGC assumes all liability for any and all funds it receives. Notwithstanding the foregoing, however, LGC agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received in connection with Landa Gardens. LGC further agrees to retain for 7 (seven) years all records, documents, reports and written accounting policies and procedures pertaining to the receipt and expenditure of funds for or in connection with the project or all other terms of this Agreement, and make available to City at all reasonable times such records, documents, reports and written accounting policies and procedures. LGC agrees to provide City with any data determined by City to be necessary to be received in connection with the Property, Landa Gardens or this Agreement.

17. Unless expressly provided for herein, City shall assume no liability and no expense by reason of this Agreement or any activities by LGC, and LGC shall be liable for any damages it causes to the Property, the building or City. Any damages to the Property, the building or City caused by LGC will be promptly repaired and otherwise made whole by LGC. Further, City shall not be obligated nor liable under this Agreement to any party for payment of any monies or provision of any goods or services.

18. LGC 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, including cost of defense, 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 this Agreement and to the extent covered by LGC's insurance, including any acts or omissions of LGC, any agent, officer, director, representative, employee, consultant or subcontractor of LGC, 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 or bodily injury, death, or property damage. IN THE EVENT LGC AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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. The provisions of this INDEMNIFICATION are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractually or otherwise, to any other person or entity. LGC shall promptly advise the CITY in writing of any claim or demand against the CITY or LGC known to LGC related to or

arising out of LGC's activities under this AGREEMENT. As a condition of the agreement to hold City harmless under the provisions of this paragraph 18, and as to any costs, including cost of defense, 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 claim, action, causes of action or demand of any kind or nature whatsoever to which City seeks or will seek indemnity from LGC, City agrees to provide prompt notice of and will tender any costs, including cost of defense, 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 claim, action, causes of action or demand of any kind or nature whatsoever to LGC and City further agrees that it/they will not take any action which might limit the ability of LGC to defend or respond to any costs, including cost of defense, 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 claim, action, causes of action or demand of any kind or nature whatsoever.

19. It is expressly understood and agreed that LGC is and shall be deemed to be an independent contractor and operator responsible to all Parties for its respective acts or omissions.

20. LGC agrees to cooperate with City, at no charge to 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.

21. Any breach or violation by either party to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the non-violating party, at its option, upon thirty (30) days' written notice to violating party, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

22. The term of this Agreement is five years, commencing on the adoption of the Ordinance. LGC shall have the option to renew and extend the term of this Agreement for seven (7) additional five-year (5) terms. The renewal shall be automatic, unless LGC provides City with written notice of LGC's intent not to renew within thirty (30) days of the end of the then current term.

23. Notwithstanding any other provision of this Agreement, any and all activity on the Grounds, whether for construction, maintenance or any other reason, by LGC or its contractors shall be scheduled and coordinated through the Library Director or his designated representative.

24. Notwithstanding any other provision of this Agreement, the Library accepts responsibility for keeping the playground equipment safe and in good repair. Any design modifications and improvements that are necessary will only be made after City and LGC have both approved the proposed modification. The Parties recognize that during the Agreement it may be necessary, due to age and changes in regulations, to total replace the playground. When this is necessary, LGC will present to the Library and City a new design plan for their approval. The cost of new playground may be shared by the Parties or one Party may be solely responsible for the cost.

25. The Library, City, and Board shall not make plans for the use of the Grounds that would alter the Master Plan without consulting LGC.

26. All notices to be given under this Agreement shall be in writing, and shall either be personally served against written receipt therefore or given by certified mail or registered mail, return receipt requested, postage prepaid and addressed to the proper party at the address which appears below, or at such other address as the Parties hereafter designate. All notice given by mail shall be deemed to have been given at the time of deposit in the United States mail and shall be effective from such date.

If to City: San Antonio Public Library
Attn: Director
600 Soledad
San Antonio, Texas 78205

With copy: City Clerk
P.O. Box 839966
San Antonio, Texas 78283-3966

If to LGC President
P.O. Box 12243
San Antonio, Texas 78212

27. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral arguments between the Parties respecting the subject matter of this Agreement.

28. All references to Master Plan in this Agreement shall mean the Master Plan as attached hereto as Exhibit A and any amendment to the Master Plan that is approved by LGC, the Board and any applicable City boards or commissions.

29. The Parties recognize that the Library may rent the Grounds to third-parties for limited use such as small birthday parties. A rental agreement that LGC has agreed to shall be used by the Library for such rentals. The rental agreement will be reviewed by the Parties from time to time to make changes as necessary. LGC AND City agree that the rental income from the Valero Energy Corporation

Pavilion shall be placed in a Library fund dedicated to Landa Library for the maintenance of the Grounds and as a supplement to the funds that LGC spends for such purpose. Library shall consult with LGC in the expenditure of such funds and agrees to budget such funds on an annual year basis.

Executed in duplicate this _____ day of _____, 2014.

CITY:

_____

Assistant City Manager
City of San Antonio

APPROVED AS TO FORM:

_____
City Attorney

LANDA GARDENS CONVERVANCY:

_____
Emily Jones
President of Landa Gardens Conservancy