

AN ORDINANCE 2011-04-07-0267

AUTHORIZING AN AGREEMENT WITH THE OFFICE OF URBAN REDEVELOPMENT SAN ANTONIO (OUR SA) FOR THE ADMINISTRATION OF LAND BANK ACTIVITIES; AUTHORIZING THE TRANSFER OF \$1,500,000.00 TO OUR SA FOR LAND BANK ACQUISITIONS AND AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR LAND BANK ADMINISTRATION IN AN AMOUNT UP TO \$7,500.00 PER MONTH, FOR UP TO A ONE-YEAR TERM BEGINNING ON APRIL 7, 2011.

* * * * *

WHEREAS, a Memorandum of Understanding (MOU) between the City of San Antonio acting through the Department of Housing and Neighborhood Services and the San Antonio Development Agency (SADA) was approved by City Council on December 6, 2006; and

WHEREAS, this MOU provided for the City to manage and conduct all of SADA's projects, business and financial activities; and

WHEREAS, on June 4, 2007, management of the non-profit portion of SADA, referred to as San Antonio Affordable Housing, Inc. (SAAH, Inc), by the City was added to the MOU by amendment; and

WHEREAS, on June 16, 2007, a second amendment was approved which designated an Assistant City Manager as an additional signatory to execute documents for SADA and SAAH, Inc; and

WHEREAS, City Council approved an Ordinance on February 4, 2010, which established the Inner City Reinvestment / Infill Policy and outlined a goal to establish a land bank for the City; and

WHEREAS, on September 16, 2010, City Council passed the FY 2011 budget which included funds for establishing a land bank and conducting land banking activities; and

WHEREAS, SADA was renamed the Office of Urban Redevelopment San Antonio (OUR SA) and via a revised MOU will be given the responsibility of managing the City's land banking activities, acquiring land bank properties with \$1.5 million in City-provided funds, and further sets out staffing and support issues between the City and OUR SA; and

WHEREAS, the Economic and Community Development Council Committee was briefed on this item on February 24, 2011; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Center City Development Office or his designee is hereby authorized to execute an agreement with the Office of Urban Redevelopment San Antonio (OUR SA) for the administration of land banking activities for a term beginning on April 7, 2011, and further authorized to execute an agreement for land bank administration services in an amount not to exceed \$7,500.00 a month, for up to a one-year term, beginning on April 7, 2011. Copies of the agreements are attached hereto and incorporated herein for all purposes as **Attachments I and II.**

SECTION 2. Funding in the amount of \$1,545,000.00 for this ordinance is available as part of the Fiscal Year 2011 Budget.

Amount	Cost Center	General Ledger	Fund
\$1,500,000.00	3401010004	5201040	11001000
\$45,000.00	3401010004	5202020	11001000
Total Amount: \$1,545,000.00			

SECTION 3. Additional funding in the amount not to exceed \$45,000.00 is contingent upon City Council approval of the Fiscal Year 2012 budget for Fund 11001000, Cost Center 3401010004 and General Ledger 5202020.

SECTION 4. Payment not to exceed the budgeted amount of \$1,500,000.00 is authorized to OUR SA and should be encumbered with a purchase order.

SECTION 5. Payment not to exceed the budgeted amount of \$7,500.00 per month for a one-year term beginning April 7, 2011 is authorized and should be encumbered with a purchase order.

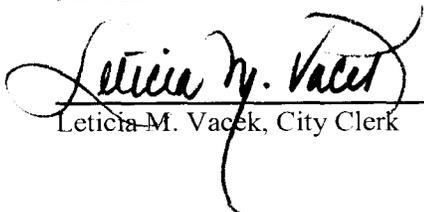
SECTION 6. The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP 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 7. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

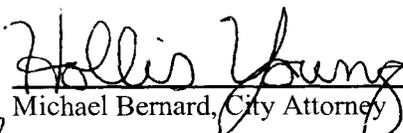
PASSED AND APPROVED this 7th day of April., 2011.

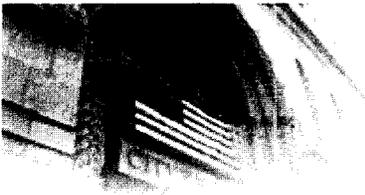

M A Y O R
Julián Castro

ATTEST:


Leticia M. Vacek, City Clerk

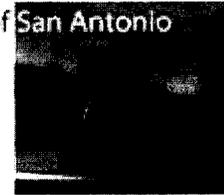
APPROVED AS TO FORM:


for Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 18

Name:	18						
Date:	04/07/2011						
Time:	10:21:24 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing an agreement with the Office of Urban Redevelopment San Antonio (OUR SA) for the administration of land banking activities, authorizing the transfer of \$1,500,000.00 to OUR SA for land bank acquisitions and authorizing a professional service agreement for land bank administration in an amount up to \$7,500.00 per month, for up to a one-year term beginning on April 7, 2011. [Pat DiGiovanni, Deputy City Manager, Center City Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

MEMORANDUM OF UNDERSTANDING

STATE OF TEXAS §

§

COUNTY OF BEXAR §

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") 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 Center City Development Office, pursuant to Ordinance No. 2011-04-07-____, dated April 7, 2011, and the OFFICE OF URBAN REDEVELOPMENT SAN ANTONIO, also known as the Urban Renewal Agency for the City of San Antonio and formerly the San Antonio Development Agency (hereinafter referred to as "OUR SA"), a Texas body corporate and politic, and SAN ANTONIO AFFORDABLE HOUSING, INC. ("SAAH"), a Texas non-profit corporation, both acting by and through each entity's Board Chair, hereto duly authorized.

WHEREAS, the City Council has adopted a budget from its General Funds for the performance of land banking and urban renewal activities which includes, but is not limited to the acquisition, maintenance, and disposition of real estate with continued coordination and assistance from CITY (the "Project"); and

WHEREAS, the City Council has designated the Center City Development Office as CITY's representative responsible for the administration, monitoring and implementation of the Project and all matters pertaining thereto; and

WHEREAS, OUR SA and CITY have agreed that OUR SA and CITY shall implement, perform and manage the Project; **NOW THEREFORE**:

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

I. TERM

1.1 Except as otherwise provided for pursuant to the provisions hereof, this MOU shall commence on April 7, 2011 and either party may terminate this MOU upon providing a written thirty (30) day notice of such termination to the other party.

1.2 OUR SA agrees and understands that CITY has projected costs for this MOU and that CITY expects to pay all obligations of this MOU from projected revenue sources, but that all obligations of CITY are subject to annual appropriation by City Council. Accordingly, if CITY does not appropriate the sums to pay the obligations hereunder, due to the unavailability of funds, then this MOU shall terminate. Neither OUR SA nor CITY shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this MOU.

II. RESPONSIBILITIES

- 2.1 CITY and OUR SA hereby accept responsibility for the performance, in a satisfactory and efficient manner as agreed to by CITY and OUR SA, of all services and activities set forth in this MOU.
- 2.2 Unless written notification by CITY to the contrary is received, CITY's Director of the Center City Development Office shall be CITY's designated representative responsible for the implementation and administration of all matters pertaining to this MOU.
- 2.3 OUR SA'S Board of Commissioners (the "Board") shall be responsible for the management of all matters pertaining to this MOU. Ongoing daily business communication contact for OUR SA shall be with the Board Chair or the Board's designee.
- 2.4 Communications between CITY and OUR SA shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.
- 2.5 All references to OUR SA in the MOU, including those found in Exhibit "A," i.e. Work Statement, and Exhibit "B", i.e. the General Power of Attorney, will include and address any and all related entities of OUR SA, including the San Antonio Affordable Housing, Inc. (hereinafter referred to as "SAAH"), and CITY will be permitted complete access to, and be provided complete cooperation from, all such related entities.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- 3.1 Notwithstanding anything to the contrary herein if CITY provides federal funds to OUR SA, OUR SA shall comply with any and all applicable rules and regulations as contained in CITY's Federal Compliance Manual (a copy of which will be included as part of every federally funded contract or federally funded activity managed as part of this MOU).
- 3.2 CITY and OUR SA shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting OUR SA's operations pursuant to this MOU.

IV. LEGAL AUTHORITY

- 4.1 CITY and OUR SA each 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 MOU and to perform the responsibilities herein required.
- 4.2 The signer of this MOU for CITY and OUR SA each represents, warrants, assures and guarantees that he or she has full legal authority to execute this MOU on behalf of CITY or OUR

SA, respectively, and to bind CITY and OUR SA, respectively, 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 MOU of either CITY or OUR SA or the person signing on behalf of CITY or OUR SA, the disputing party shall have the right, at its option, to either temporarily suspend or permanently terminate this MOU.

4.4 The parties agree that the urban renewal activities of OUR SA constitute a public purpose. All support and assistance provided by CITY is in exchange for the performance of activities consistent with that public purpose.

V. PERFORMANCE BY CITY

5.1 CITY, in accordance and compliance with the terms, provisions and requirements of this MOU, shall administer, perform and provide all of the activities and services set forth in the Work Statement attached hereto and incorporated herein for all purposes as Exhibit "A".

5.2 CITY and OUR SA agree that CITY may modify or alter Exhibit "A" to comply with any annual land bank plan instituting all permissible land bank activities as permitted by the Texas Land Bank Statute (i.e. Chapter 379E of the Texas Local Government Code) and other activities permitted by other laws, including those permitted by the Texas Urban Renewal Act or other development statutes.

VI. STAFFING AND TECHNICAL ASSISTANCE BY CITY

6.1 CITY agrees to provide staffing and technical assistance for the continued operation of OUR SA until all necessary tasks are satisfactorily completed as required for completion of the Project as determined by CITY.

6.2 It is expressly understood by CITY and OUR SA that this MOU in no way obligates CITY to assume any business, project or contract of OUR SA. CITY shall have the absolute and sole discretion to determine the business, project or contract(s) that will be assumed or transferred to CITY pursuant to the Project.

6.3 Unless otherwise agreed in writing or as designated in Exhibit "A", CITY shall not be liable for any OUR SA cost, or portion thereof, which:

(A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;

(B) Was incurred prior to the commencement date or subsequent to the termination date of this MOU as specified in Article I hereinabove;

(C) Is not in strict accordance with the terms of this MOU, including all exhibits attached hereto;

6.4 It is expressly agreed and understood by CITY and OUR SA, that CITY and OUR SA will coordinate staffing and technical assistance for the continued operation of OUR SA as further delineated in Exhibit "A".

6.5 CITY and OUR SA agree that the Director for CITY's Center City Development Office will serve as the Executive Director of OUR SA and administer and implement OUR SA operations and supervise any staff and technical assistance.

VII. PERFORMANCE BY OUR SA

7.1 OUR SA, in accordance and compliance with the terms, provisions and requirements of this MOU, shall undertake land banking activities on behalf of CITY to acquire, maintain, and dispose of real estate in conformity with all applicable state and local laws, including any applicable CITY plans, goals, and policies approved by CITY. OUR SA understands and agrees that if state and local laws, including CITY plans, goals and policies are amended or revised, it shall comply with them or otherwise immediately notify CITY pursuant to the provisions of Article XXI of this MOU.

7.2 OUR SA and CITY, in accordance and compliance with the terms, provisions and requirements of this MOU, shall designate the OUR SA Board Chair and the City Manager or her designate or CITY's Director of the Center City Development Office to execute any and all documents to transact business for OUR SA. The OUR SA Board Chair shall be available to CITY staff at all reasonable times during business hours to transact business.

7.3 OUR SA shall execute a Power of Attorney to CITY to transact business on its behalf. Said Power of Attorney is attached hereto and incorporated herein as Exhibit "B".

VIII. EXPENDITURE REQUESTS

8.1 In consideration of OUR SA's performance, in a satisfactory and efficient manner as determined by CITY, of all services and activities set forth in this MOU, OUR SA agrees to expend the funds herein for all eligible expenses incurred hereunder in accordance with the Project Budget set forth in Exhibit "C", attached hereto and incorporated herein by reference and shall be subject to any and all limitations and provisions set forth in this Article.

8.2 Notwithstanding any other provision of this MOU, the total of all expenditures and other obligations made or eligible costs incurred by OUR SA for land bank activities hereunder shall not exceed the sum of One Million Five Hundred and Seventy-Five Thousand and No/100 Dollars (\$1,575,000.00).

8.3 CITY shall not be liable for any OUR SA cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source.
- (B) Is not in strict accordance with the terms of this MOU, including all exhibits attached.
- (C) Has not been billed to CITY in accordance with the terms of this MOU within forty-five (45) calendar days following billing to OUR SA, or termination of this MOU, whichever is earlier.
- (D) Is not an allowable cost as defined by Project Budget (Exhibit "C").

8.4 CITY shall not be liable for any OUR SA cost, or portion thereof, which is or was incurred in connection with an activity of OUR SA where:

(A) Prior written authorization from CITY is required for the activity and such authorization was not first procured.

(B) CITY has requested that OUR SA furnish data concerning an activity prior to proceeding further therewith and OUR SA nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

8.5 CITY shall not be obligated or liable under this MOU to any party, other than OUR SA, for payment of any monies or provision of any goods or services.

IX. MAINTENANCE OF RECORDS

9.1 OUR SA agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this MOU. OUR SA further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this MOU and with all applicable federal and state regulations establishing standards for financial management; and

(B) That OUR SA's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

9.2 OUR SA agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this MOU.

9.3 To the extent of any executory sub-contracts, OUR SA agrees to include the substance of this Article in all of its sub-contracts.

9.4 Nothing in this Article shall be construed to relieve OUR SA of:

(A) Responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this MOU; and

(B) Fiscal accountability and liability pursuant to this MOU and any legal requirements.

9.5 The Public Information Act, Government Code Section 552.021, requires the CITY to make public information available to the public. Under Government Code Section 552.002(a), public information means information that is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business: 1) by a governmental body; or 2) for a governmental body and the governmental body owns the information or has a right of access to it. Therefore, if OUR SA receives inquiries regarding documents within its possession pursuant to this MOU, OUR SA shall within twenty-four (24) hours of receiving the requests forward such requests to CITY for disposition. If the requested information is confidential pursuant to state or federal law, OUR SA shall submit to CITY the list of specific statutory authority mandating confidentiality no later than three (3) business days of OUR SA's receipt of such request. For the purposes of communicating and coordinating with regard to public information requests, all communications shall be made to the designated public information liaison for each party. Each party shall designate in writing to the other Party the public information liaison for its organization and notice of a change in the designated liaison shall be made promptly to the other party.

X. ACCESSIBILITY OF RECORDS

10.1 At any reasonable time and as often as CITY may deem necessary, OUR SA shall make all of its records available to CITY, HUD, or any of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. OUR SA's records shall include, but shall not be limited to, the following: payroll, personnel and employment records; contracts; and invoices.

XI. BONDING AND INSURANCE

11.1 Intentionally deleted.

XII. INDEMNIFICATION

12.1 OUR SA and CITY acknowledge they are political subdivisions of the State of Texas and are subject to State of Texas, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practices and Remedies Code and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

12.2 This MOU will be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this MOU shall be in Bexar County, Texas. This MOU is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

XIII. CONFLICT OF INTEREST

13.1 CITY and OUR SA covenant that neither it nor any member of its' governing bodies or of its' staff presently have any personal interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this MOU. CITY and OUR SA further covenant that in the performance of this MOU, no persons having such interest shall be employed or appointed as a member of its' governing bodies or of its' staff.

13.2 CITY and OUR SA further covenant 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.

XIV. BOARD MEETINGS

14.1 During the term of this MOU, CITY shall provide staff assistance for the posting and recordation of all notices of meetings of its Board of Commissioners, including preparation of minutes, resolutions and other governing documents.

14.2 OUR SA understands and agrees that CITY representatives shall be afforded access to all Board of Commissioners' meetings as allowed by law.

14.3. OUR SA agrees to regularly hold board meetings in accordance with OUR SA's bylaws.

XV. CHANGES AND AMENDMENTS

15.1 Except when the terms of this MOU expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing, executed by both parties, and as applicable, approved by the City Council of the City of San Antonio.

15.2 Notwithstanding the above, the parties agree that the CITY and OUR SA shall have the authority to execute an amendment of this MOU or its Exhibits without the necessity of seeking any further approval by the City Council of the City of San Antonio or OUR SA Board approval, if permitted by all applicable local, state and federal laws, in the limited circumstance when such amendment solely increases funding of this MOU in an amount not exceeding the lesser of: (a) twenty-five percent (25%) of the total amount of this MOU or (b) \$25,000.00.

15.2 Whenever and as often as deemed reasonably necessary by CITY, CITY and OUR SA may request and require changes to the Work Statement (Exhibit "A"); such changes as requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases in the total monetary obligation of CITY to OUR SA as provided for pursuant to the terms, provisions and conditions of this MOU.

15.3 Except pursuant to (a) prior submission by OUR SA of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, OUR SA shall neither make transfers between or among line items approved within the budget categories set forth in the Budget Summary incorporated within Exhibit "C" nor shall OUR SA alter, add to or delete from the Budget Detail likewise incorporated within said Exhibit "C." Instead, OUR SA shall request budget revisions in writing and in a form prescribed by CITY; such request for revisions, however, shall not increase the total monetary obligation of CITY as provided for pursuant to this MOU, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

15.4 In the event that the level of funding for OUR SA is significantly altered, OUR SA shall submit, immediately upon request by CITY, a revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Exhibit "C."

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

XVI. TERMINATION

16.1 "Termination" of this MOU shall mean upon a decision to terminate by either CITY or OUR SA, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

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

16.3 Within thirty (30) calendar days after receipt of written notice to terminate, OUR SA shall submit a statement to CITY, indicating in detail the services performed under this MOU prior to the effective date of termination.

16.4 Should OUR SA violate the terms in Sections 8.4 or 18.1, such actions shall be considered a material breach of this MOU and CITY shall have the option to immediately terminate this MOU.

XVII. NOTIFICATION OF ACTION BROUGHT

17.1 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 OUR SA, OUR SA shall give written notice thereof to CITY within two (2) business days after itself being notified. OUR SA's notice to CITY shall state the date and hour of notification to OUR SA 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 XXII of this MOU.

XVIII. ASSIGNMENTS

18.1 OUR SA shall not transfer, pledge or otherwise assign this MOU, 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.

XIX. SEVERABILITY OF PROVISIONS

19.1 If any clause or provision of this MOU 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 MOU 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 MOU that is invalid, illegal, or unenforceable, there be added as a part of the MOU 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.

XX. ENTIRE MOU

20.1 This MOU constitutes the final and entire MOU between the parties hereto and contains all of the terms and conditions agreed upon. No other MOUs, oral or otherwise, regarding the subject matter of this MOU 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.

XXI. NOTICES

21.1 For purposes of this MOU, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:
Director
Center City Development Office
1400 S. Flores
San Antonio, Texas 78204

Deputy City Manager
Center City Development Office
P.O. Box 839966
San Antonio, Texas 78283

City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283
Attn: OUR-SA Liaison Attorney

OUR SA:
Chair,
Board of Commissioners
Office of Urban Redevelopment
1400 South Flores
San Antonio, Texas 78204

Escamilla, Poneck & Cruz, LLP
700 N. St. Mary's, Suite 850
San Antonio, Texas 78205
Attn: Douglas A. Poneck

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.

XXII. PARTIES BOUND

22.1 THIS MOU 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.

XXIII. GENDER

23.1 Words of gender used in this MOU 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.

XXIV. RELATIONSHIP OF PARTIES

24.1 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.

XXV. ADVERSARIAL PROCEEDINGS

25.1 OUR SA agrees that under no circumstances will the funds received under this MOU be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial

proceeding against the CITY or any other public entity, unless written permission is given by CITY.

XXVI. TEXAS LAW TO APPLY

26.1 THIS MOU 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.

XXVII. CAPTIONS

27.1 The captions contained in this MOU are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this MOU.

EXECUTED this the _____ day of _____.

CITY OF SAN ANTONIO

OFFICE OF URBAN REDEVELOPMENT

By: _____
Pat DiGiovanni
Title: Deputy City Manager

By: _____
Title: Chair, Board of Commissioners

SAN ANTONIO AFFORDABLE HOUSING, INC.

By: _____
Title: Chair, Board of Directors

APPROVED AS TO FORM:

Assistant City Attorney

Attachments:

- Exhibit "A" Work Statement
- Exhibit "B" Power of Attorney
- Exhibit "C" Budget

Exhibit "A"
Work Statement
Year 2011

Items on this exhibit are subject to the specific terms of the MOU.

A. CITY will assist OUR SA by providing staff support and other technical assistance for the operation and management of OUR SA in all of its activities, including its urban renewal activities, by:

1. Directly engage one (1) staff support position to provide assistance to OUR SA as follows: a) Real Estate Manager;
2. Assist and coordinate with OUR SA in engaging two (2) staff support positions to provide assistance to OUR SA as follows: a) Financial Accountant; and, b) Senior Management Analyst;
3. Managing acquisition and disposition of properties associated with the Historic Gardens project;
4. Managing any on-going home rehabilitation projects;
5. Reporting to the OUR SA Board of Commissioners on all business performed on behalf of OUR SA;
6. Reporting to the OUR SA Board of Commissioners on any projects or properties that are ready for sale;
7. Managing any current administrative contracts or matters for OUR SA, including, but not limited to, the termination or cancellation of contracts or matters as needed;
8. Managing any current financial matters for OUR SA, including, but not limited to, review and payment of fees, invoices, and costs associated with OUR SA; and
9. Allocating funding to OUR SA to secure such other staff and technical support as CITY may deem appropriate and necessary.

B. OUR SA agrees that staff identified in section A (2) above, engaged by OUR SA, will be provided a salary and an allowance for benefits commensurate with those provided for a comparable CITY employee or position.

EXHIBIT "B"

GENERAL POWER OF ATTORNEY

The OFFICE OF URBAN REDEVELOPMENT (otherwise known as the Urban Renewal Agency for the City of San Antonio, which was previously known as the San Antonio Development Agency or "SADA"), a body corporate and politic, and SAN ANTONIO AFFORDABLE HOUSING, INC. (OUR SA's affiliated non-profit otherwise known as "SAAH") acting by and through each respective entity's Board Chair, hereto duly authorized, with offices at 1400 S. Flores, San Antonio, County of Bexar, State of Texas, appoints the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its Center City Development Office and its Director, San Antonio, Bexar County, Texas, as its true and lawful attorney-in-fact. The attorney-in-fact so appointed may do and perform each and every act and thing that OUR SA and/or SAAH may or can do, so long as the attorney-in-fact shall deem, in its discretion, the act to be proper, expedient or advisable.

After-Acquired Property Covered

All powers granted in this document may be exercised equally with respect to an interest OUR SA and/or SAAH has at the time the Power is executed or that is acquired later, whether or not the property is located in this state and whether or not the powers are exercised in this state.

Fiduciary Responsibilities

All powers granted in this document are granted with the understanding that they will be used for OUR SA's benefit and on OUR SA's and/or SAAH's behalf and will be exercised by the attorney-in-fact only in a fiduciary capacity. **THE ATTORNEY-IN-FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.**

DURABILITY OF POWER

OUR SA and SAAH, each as principal under this Power of Attorney, direct that this Power of Attorney is not affected by any subsequent disability or incapacity.

DESCRIPTION OF POWERS TRANSFERRED

By executing this document, OUR SA and SAAH intend to confer authority with respect to any class of transactions listed below and to empower CITY for that class of transactions to have the authority to do the following:

Conveying and Encumbering Property

1. To buy, receive, lease, accept, or otherwise acquire; to sell, convey, mortgage, hypothecate, pledge, quitclaim, or otherwise encumber or dispose of; or to contract or agree for

the acquisition, disposal, or encumbrance of property of any kind, wherever it is located, be it real, personal, or mixed, or any custody, possession, interest, or right in it or pertaining to it, on any terms that my attorney-in-fact shall think proper as conclusively evidenced by this action.

Managing Property

2. To take, hold, possess, invest, lease, let or otherwise manage any or all of OUR SA's and/or SAAH's real, personal, or mixed property, or any interest in it or pertaining to it; to eject, remove, or relieve tenants or other persons from, and recover possession of, this property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, rebuild, modify, or improve the same or any part of it.

Improvements

3. To use, develop, alter, replace, remove, erect, or install structures or other improvements on any or all of OUR SA's and/or SAAH's real, personal, mixed property, or any interest in it or pertaining to it.

Collecting Revenues and Paying Debts

4. To make, do, and transact every kind of business of whatever kind or nature, including the receipt, recovery, collection, payment, compromise, settlement, and adjustment of all accounts, legacies, bequests, interest, dividends, annuities, income, rents, claims, demands, actions, causes of action, debts, taxes, and obligations, that may now or in the future be due, owing, or payable by OUR SA and/or SAAH or to OUR SA and/or SAAH.

Invest Money

5. To conserve, invest, disburse, or use any money or other thing of value received on behalf of OUR SA and/or SAAH for the purposes intended.

Contract

6. To contract in any manner with any person or entity, on terms agreeable to the attorney-in-fact or agent, to accomplish a purpose of a transaction, and to perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of OUR SA and/or SAAH.

Executing Instruments

7. To make, endorse, guarantee, accept, receive, sign, seal, execute, acknowledge, and deliver deeds, assignments, bills of sale, agreements, certificates, hypothecations, checks, notes, mortgages, bonds, vouchers, receipts, releases, and such other instruments in writing of whatever kind or nature, as may be necessary, convenient, or proper in the premises.

Managing Accounts

8. To make deposits or investments in or withdrawals from any account, holding, or interest that OUR SA and/or SAAH may now or in the future have or be entitled to, in any banking, trust, or investment institution, including postal savings depository offices, credit unions, savings and loan associations, and similar institutions; to exercise any right, option, or privilege pertaining to it or them; and to open or establish accounts, holdings, or interest of whatever kind or nature, with any of these institutions, in OUR SA's and/or SAAH's name or in the name of OUR SA's and/or SAAH's attorney-in-fact or in any such names jointly, either with or without right of survivorship.

Litigation

9. To institute, prosecute, defend, intervene in, compromise, settle, submit to arbitration, assign, release, and dispose of legal, equitable, or administrative hearings, actions, suits, attachments, arrests, claims, liens, levies, distresses, or other proceedings, or otherwise to engage in litigation in connection with the premises or property.

Court's Assistance

10. To seek on my behalf the assistance of a court to carry out an act authorized by the power of attorney.

Executing and Filing Taxation Forms

11. To prepare, execute, and file income, ad valorem, gift, estate, and other tax returns, and other governmental reports, declarations, applications, requests, and documents in connection with the premises or property.

Managing Insurance

12. To act as OUR SA's and/or SAAH's attorney-in-fact or proxy in respect to any policy of insurance on OUR SA's and/or SAAH's property and, in that capacity, to exercise any right, privilege, option that OUR SA and/or SAAH may have under or pertaining to it, including, the right to change the beneficiary or the method of payment of the insurance proceeds and the right to make a cash surrender of the policy as distinguishable from a surrender of the policy for loan, conversion, or other purposes as provided in it.

EXAMPLES LISTED IN DOCUMENT ARE NOT LIMITS

In giving and granting the attorney-in-fact full power and authority to do and perform every act, deed, matter, and thing whatever in and about OUR SA's and/or SAAH's property, and affairs, as fully as OUR SA and/or SAAH might or could do, the above-enumerated powers are listed merely in aid and exemplification of the full, complete, and general power granted in this document. The above-enumerated powers are not in limits on or definitions of those powers.

POWER OF AGENT TO BIND PRINCIPAL

OUR SA and/or SAAH declares by this document that any act or thing lawfully done under it by OUR SA's and/or SAAH's attorney-in-fact shall be binding on OUR SA and/or SAAH and its heirs, legal representatives, and assigns. This power of attorney may be filed for record in any appropriate public office.

RELIANCE ON POWER BY THIRD PARTIES

OUR SA and/or SAAH agree(s) that any third party who receives a copy of this document may act under it. Revocation of this Power of Attorney is not effective as to a third party until the third party receives actual notice of the revocation.

Signed on: _____

OFFICE OF URBAN REDEVELOPMENT

BY: _____
Title: Board Chair, Board of Commissioners
PRINCIPAL

**SAN ANTONIO AFFORDABLE HOUSING,
INC.**

BY: _____
Title: Board Chair
PRINCIPAL

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This document was acknowledged before me on the ____ day of _____,
20__.

Notary Public in and for the State of Texas

My commission expires: _____

EXHIBIT "C"

Center City Development Office Land Bank Startup Budget Projected Revenues					
Commitment Item	Revenue Classification				Land Bank Op. Budget
	Beginning Fund Balance				-
	City General Fund (acquisition)+75000				1,500,000
	City General Fund - Operations				75,000
	Total Revenues & Transfers				1,575,000
	TOTAL PROJECTED AVAILABLE FUNDS				\$ 1,575,000
A. Personnel Services					
Commitment Item	# of Pos	Position Title	Proposed COSA Dept Utilization	Percent	Land Bank Op. Budget
5101010	1	Real Estate Manager	NEW	100%	75,000
* Benefits:					
* Benefits to be covered by SADA funding source					
Total Benefits					
Total Personnel Services					75,000
B. Contractual Services Acquisition Costs					
5209010	Acquisition + Closing Costs - OUR SA				1,241,150
52XXXXX	Maintenance Costs				110,050
5202025	Other Contractual Services - Legal				40,000
5201040	Professional fees				103,800
5304010	Transportation Fees - Mileage/Travel/Food				5,000
Total Acquisition Cost					1,500,000
TOTAL FY 2011 PROPOSED EXPENSES					\$ 1,575,000
End Fund Balance					\$ -

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as City), acting by and through its Director of the Center City Development Office (hereinafter referred to as “Center City”), pursuant to Ordinance No. 2011-04-07-____, passed and approved on April 7, 2011, and _____ (hereinafter referred to as “Consultant”), both of which may be referred to herein collectively as the “Parties”.

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. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

“City” is defined in the preamble of this Agreement and includes its successors and assigns.

“Consultant” is defined in the preamble of this Agreement and includes its successors.

“Director” shall mean the director of the Center City Development Office (Center City).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence upon execution by both parties and terminate on March 31, 2012.

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

2.3 Consultant further agrees and understands that the City expects to pay all obligations of this Agreement from grant funding. Accordingly, if grant funding is not received by City in a sufficient amount to pay any of City’s obligations under the terms of this Agreement, then this Agreement will terminate and neither City nor Consultant will have any further obligations hereunder. Lack of funding is not and will not be considered a breach of this Agreement.

III. SCOPE OF SERVICES

3.1 Consultant shall be responsible for providing any and all documents and equipment as necessary to perform the duties set out below, unless otherwise agreed upon by the Parties.

3.2 Consultant will provide services as set out within this Article, and further outlined within a Memorandum of Understanding between the City and the Office of Urban Redevelopment San Antonio (OUR SA). Consultant's services will be in support of the urban renewal activities of OUR SA which have been found by the City Council of San Antonio to constitute a public purpose.

3.3 Consultant shall be responsible for the planning, operation, management, and coordination of all real estate activities in the OUR SA Land Bank, including but not limited to the following:

- 3.3.1 Board Liaison duties;
- 3.3.2 Coordinate with OUR SA financial accountant regarding annual audits;
- 3.3.3 Origination and preparation of all Memos and documentation for Board meetings;
- 3.3.4 Correspondence to Board, Management, and other City Departments regarding required reports and summaries;
- 3.3.5 Review property appraisals and acquisition procedures;
- 3.3.6 Manage and conduct due diligence regarding the acquisition and disposition of all Land Bank properties;
- 3.3.7 Negotiate the acquisition and disposition of Land Bank properties;
- 3.3.8 Coordinate with all outside Governmental entities associated with the acquisition and disposition of Land Bank properties;
- 3.3.9 Manage all outside professionals regarding the acquisition, maintenance, and disposition of Land Bank properties to include Title, Engineering, Survey, Appraisal, Land Maintenance, and other Real Estate related Companies;
- 3.3.10 Coordinate with appropriate City Departments regarding the acquisition, maintenance, and disposition of all Land Bank properties;
- 3.3.11 Conduct presentations before the Planning Commission, City Council, or others as required;

- 3.3.12 Assist the public with questions concerning acquisition of property;
- 3.3.13 Serve as liaison between staff and attorneys and assists in the preparation of court cases;
- 3.3.14 Review, prepare, or manage the preparation of various real estate instruments used by the Land Bank and/or City;
- 3.3.15 Plan, organize, and direct the work of the real estate staff;
- 3.3.16 Perform related duties and fulfills responsibilities as required;
- 3.3.17 Monitor the annual budget for OUR SA Land Bank;
- 3.3.18 Research and analyze complex data, policies, practices, systems, procedures, and develop written summaries on findings and recommendations;
- 3.3.19 Prepare detailed written reports and presentations on proposed and ongoing projects.
- 3.3.20 Perform all other related duties and fulfills responsibilities as required.

3.4 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services, activities, duties and responsibilities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed SEVEN THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS per month (\$7,500.00/mo.) for a term of ___ months and a total cumulative value not to exceed \$ __, __. __.

4.2 City and Contractor agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which City receives an invoice, with appropriate documentation as required by City, from Contractor for said services.

4.3 No additional fees or expenses of Contractor shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have

been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.4 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

4.5 Since Consultant does not have, and will not be providing, insurance to cover the indemnification requirements contained in this contract, Consultant and City agree that City may withhold payment from Consultant's fee in the amount necessary, as determined solely by City, to cover any damages sustained by the City, for which Consultant is providing indemnification, as more particularly set forth in Section XI of this Agreement. Should such sum be insufficient to satisfy Consultant's obligations hereunder, City may use any other remedies available at law or in equity to satisfy such obligations.

V. OWNERSHIP OF DOCUMENTS

5.1 In accordance with Texas law, Consultant acknowledges and agrees that all local government records as defined in Chapter 201, Section 201.003 (8) of the Texas Local Government Code created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, Consultant agrees that no such local government records produced by or on the behalf of Consultant pursuant to this Contract shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant acknowledges and agrees that all local government records, as described herein, produced in the course of the work required by this Contract, shall belong to and be the property of City and shall be made available to the City at any time. Consultant further agrees to turn over to City all such records upon termination of this Contract. Consultant agrees that it shall not, under any circumstances, release any records created during the course of performance of the Contract to any entity without the written permission of the Director, unless required to do so by a court of competent jurisdiction. City shall be notified of such request as set forth in Article VIII of this Contract.

5.3 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Contract is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant. Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORD REQUESTS

6.1 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced in Article V. Ownership of Records herein. Consultant understands and agrees that City will process and handle all such requests, regarding records that are owned or possessed by the City.

VII. TERMINATION

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

7.2 Termination Without Cause. This Agreement may be terminated by City or by Consultant upon thirty (30) calendar days written notice to the other party, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this Article 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required in this Agreement.

7.4.1 Failing to perform or failing to comply with any covenant herein required

7.4.2 Performing unsatisfactorily as determined by Director

7.5 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.

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

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

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Center City Development Office, Director
P.O. Box 839966
San Antonio, Texas 78205

If intended for Consultant, to:

Contractor

IX. INSURANCE REQUIREMENTS

9.1 Consultant shall be responsible for insuring its own Property, Equipment, Autos and Legal Liability. In no event will the City be required to maintain any insurance coverage

for Consultant.

X. CONFIDENTIALITY

10.1 The Consultant acknowledges that in connection with the services to be performed under this Agreement by the Consultant, the Consultant may be acquiring and making use of certain confidential information of the other party which includes, but is not limited to, management reports, financial statements, internal memoranda, reports, patient lists/records, and other materials or records of a proprietary nature (hereinafter referred to as "Confidential Information"). Therefore, in order to protect the Confidential Information, the Consultant shall not after the date hereof use the Confidential Information except in connection with the performance of services pursuant to this Agreement, or divulge the Confidential Information to any third party, unless the City consents in writing to such use or divulgence or disclosure is required by law. In the event that Contactor receives a request or demand for the disclosure of Confidential Information, Consultant shall immediately provide written notice to the City of such request or demand, including a copy of any written element of such request or demand.

10.2 The Consultant agrees to abide by all confidentiality policies and rules of City regarding the confidentiality and privacy of patients and patients' medical records. All such instructions shall be in accordance with the formal policies and rules of the City and with all federal and state laws and regulations regarding patient and medical record confidentiality, including but not limited to the Health Insurance Portability and Accountability Act (HIPAA).

XI. INDEMNIFICATION

11.1 Consultant covenants and agrees to FULLY INDEMNIFY, DEFEND 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 Consultant's activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents, employees, directors and representatives while in the exercise of rights or performance of the 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 CONSULTANT 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.

11.2 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. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Except as otherwise stated herein, Consultant 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 City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee, or subcontractor.

12.2 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 Consultant 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 Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

13.1 Consultant covenants and agrees that he or she is an independent Contractor and not an officer, agent, servant or employee of City; that Consultant 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, Consultants, subcontractors and Contractors; that the doctrine of respondent superior

shall not apply as between City and Consultant, its officers, agents, employees, Consultants, subcontractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. 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 Consultant under this Agreement and that the Consultant has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.1 Consultant 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 the City's 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.

14.2 Pursuant to the subsection above, Consultant 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. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XV. AMENDMENTS

15.1 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 Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XVI. SEVERABILITY

16.1 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 Contract 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.

XVII. LICENSES/CERTIFICATIONS

17.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVIII. COMPLIANCE

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

XIX. NONWAIVER OF PERFORMANCE

19.1 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 City Council, as described in Article XV. Amendments. 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.

XX. LAW APPLICABLE

20.1 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.

20.2 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.

XXI. LEGAL AUTHORITY

21.1 The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXII. PARTIES BOUND

22.1 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.

XXIII. CAPTIONS

23.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. DEBARMENT

24.1 Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any State or Federal Program.

24.2 Contractor shall provide immediate written notice to City, in accordance with Article VIII. Notice, if, at any time during the term of this contract, including any renewals hereof, Contractor learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

----- INTENTIONALLY LEFT BLANK -----

XXV. ENTIRE AGREEMENT

25.1 This Agreement, together with its authorizing ordinance and 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 XV. Amendments. This Agreement shall supersede any and all prior written and oral agreements between the City and Consultant.

EXECUTED and **AGREED** to this the ____ day of _____, 2011.

CITY OF SAN ANTONIO:

CONSULTANT:

Pat DiGiovanni
Director,
Center City Development Office

Name _____

Approved as to Form:

City Attorney

Office of Urban Redevelopment – San Antonio (OUR SA)

Memorandum of Understanding



City Council Presentation

April 7, 2011

Agenda Item # 18

Center City Development Office

Memorandum of Understanding Purpose

- Formalizes cooperation between the City and OUR SA
- Delineates the administration, funding, monitoring and implementation functions of OUR SA
- Pledges funding in the amount of \$1.5 M for land banking activities:
 - Acquisition
 - Disposition
 - Maintenance
 - Professional Services
- Directs funding for a Real Estate Manager position
- CCDO will be the departmental liaison

OUR SA Background

- 1957: SADA (San Antonio Development Agency) was created by referendum as the City's Urban Renewal Agency
- 1993: City redefined SADA's mission to focus on housing with emphasis on activities within Loop 410
- February 2010: City Council approved the Inner City Reinvestment/Infill Policy (ICRIP) which outlined the goal of creation of a Land Bank
- September 2010: City Council appropriated funds for the creation of the Land Bank
- September 2010: SADA's name was changed to the Office of Urban Redevelopment - San Antonio (OUR SA)

OUR SA Going Forward

- Staff is reviewing identified target areas for potential infill housing and land banking
- City will hire the Real Estate Manager who will be primarily responsible for the administration of the Land Bank
 - The Real Estate Manager will be a contract position hired by the City through a Professional Services Agreement
- OUR SA will release an RFQ for brokerage services to assist in the acquisition of properties
- Commencement of Land Bank acquisitions

Professional Services Agreement

- Defines the scope of services for the Real Estate Manager
- Manager will report to the CCDO Director
- Funding for the Manager comes out of previously appropriated funds
- Agreement provides \$7,500 per month for the remaining fiscal year
- This will be a contract position