SW/vv
11/21/13
Item #12

AN ORDINANCE 2013-11-21-0786

AUTHORIZING THE ACQUISITION OF APPROXIMATELY 23.2 ACRES OF LAND ADJACENT TO FRIEDRICH WILDERNESS PARK LOCATED IN COUNCIL DISTRICT 8 FOR $750,000.00, AND AUTHORIZING $5,000.00 FOR ASSOCIATED CLOSING COSTS, ALL PAYABLE FROM THE PARKS DEVELOPMENT AND EXPANSION VENUE PROJECTS FUND APPROVED BY THE VOTERS IN 2000 AND 2005.

* * * * *

WHEREAS, the proposed acquisition is part of the Proposition 3 Parks Development and Expansion Venue Project approved by voters in May 2000; and

WHEREAS, this acquisition is consistent with policy adopted by the City Council for the acquisition of properties on the Edwards Aquifer Recharge and Contributing Zones as funded by sales tax initiatives and the adopted Parks and Recreation Strategic System Plan; and

WHEREAS, the acquisition is also consistent with Natural Resource and Urban Design Goals of the San Antonio Master Plan Policies; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee or the Director of the Parks and Recreation Department or his designee, is authorized to acquire approximately 23.2 acres of land adjacent to Friedrich Wilderness Park located in Council District 8 for $750,000.00, and authorizing $5,000.00 for associated closing costs all payable from the Parks Development and Expansion Venue Projects fund approved by the voters in 2000 and 2005. A copy of the contract is attached hereto in substantially final form and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is further authorized to execute any and all necessary documents to effectuate said acquisition.

SECTION 3. Payment in the amount of $755,000.00 in SAP Fund 40005000, Park Improvements, SAP Project Definition 26-00604, Friedrich Acquisition, is authorized to be encumbered and made payable to Alamo Title for land, title, due diligence and closing costs related to the acquisition of 23.2 acres of land adjacent to Friedrich Wilderness Park located in Bexar County, Texas.

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

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

PASSED AND APPROVED this 21st day of November, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael Bernard, City Attorney

Agenda Item:	**12 (in consent vote: 5, 6, 7, 8, 10A, 10B, 11, 12, 13, 14, 15, 16B, 19, 20, 21, 22, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42, 43, 44, 45, 46)**
Date:	11/21/2013
Time:	12:17:52 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the acquisition of approximately 23.2 acres of land adjacent to Friedrich Wilderness Park located in Council District 8 for $750,000.00, and authorizing $5,000.00 for associated closing costs, all payable from the Parks Development and Expansion Venue Projects fund approved by the voters in 2000 and 2005. [Gloria Hurtado, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				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				
Carlton Soules	District 10		x				

Attachment I

REAL ESTATE SALES CONTRACT

* * * * *

STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

IN CONSIDERATION OF $100.00 (the "Consideration"), the receipt and adequacy of which is hereby acknowledged, and of the agreements contained in this Contract, Mr. and Mrs. Charlie Kosarek, hereinafter referred to as "SELLER", for and in consideration of the agreed purchase price of Seven Hundred Fifty Thousand and No/100 Dollars ($750,000.00) (the "Purchase Price") and upon the terms and conditions hereof, contracts to GRANT, SELL and CONVEY by General Warranty Deed to the City of San Antonio, hereinafter referred to as "BUYER"; a good, marketable, and indefeasible fee simple title, free and clear of all liens and encumbrances of every kind (except encumbrances acceptable to BUYER and liens for current taxes and assessments), to the following described Property (the "Property") in the City of San Antonio, Bexar County, Texas, to-wit:

23.17 (twenty three and seventeen hundredths) acres, located at 7609 Heuermann Road, San Antonio, County of Bexar, Texas 78256, as defined in the attached survey, together with all improvements and other things incident or belonging thereto, including all right, title and interest in or to all adjoining streets or alleys.

SPECIAL CONDITIONS: SELLER'S BARGAIN SALE. BUYER acknowledges that a qualified appraiser retained by SELLER has determined that the fair market value of the property exceeds the Purchase Price. BUYER makes no representation about the extent to which the fair market value of the Property exceeds the Purchase Price. BUYER acknowledges SELLER'S donative intent to transfer the PROPERTY to BUYER for less than fair market value, so that the Property can be used as a public park. BUYER acknowledges that SELLER will treat the transaction as a bargain sale for federal tax purposes. BUYER agrees to sign the Donee Acknowledgement on SELLER'S Internal Revenue Service Form 8283 (Noncash Charitable Contributions) and to produce a gift acknowledgement letter as required by Internal Revenue Service requirements.

Upon execution of this agreement by SELLER, BUYER and its designated representatives, employees or authorized agents, shall have access to and shall be allowed to enter upon the Property for the purpose of clearing access up to six feet in width along the Property boundary perimeter.

SELLER will deliver a title commitment from a title company of Seller's selection (the "Title Company") to BUYER and SELLER shall cure any items listed therein at the request of BUYER. In the event SELLER is unable to cure such defects in title BUYER shall have the right to either complete the purchase with the defects or to terminate this agreement.

SELLER shall bear the expense of the following closing costs: The SELLER will pay all property taxes and assessments due on the Property at the time of closing and the cost of the basic premium for the title policy in the amount of the purchase price.

BUYER shall bear the expense of the following closing costs: The BUYER will pay any transfer taxes on the conveyance to BUYER, the title examination, and all desired policy endorsements selected by SELLER, and tax certificate fees.

SELLER and BUYER shall split evenly any escrow fees, filing and recording fees, and other standard closing costs not otherwise addressed in this Contract will be paid according to local custom.

Title Company shall act as escrow agent and the closing shall occur in its offices. SELLER, at closing, agrees to deliver a General Warranty Deed, in substantially the form of the deed attached to the end of this agreement, with no reservations from or exceptions to conveyance and warranty except those listed in the title commitment and accepted by BUYER, and to surrender possession the Property to BUYER immediately upon closing.

The Purchase Price is payable at closing.

Closing will be held on or before the later of December 1, 2013 or within thirty (30) days from the date of approval of this agreement by the San Antonio City Council. Closing will take place at the offices of Title Company, or at such other place as the parties may mutually agree. If the Closing has not occurred by December 27, 2013, this contract shall automatically terminate, the Title Company will render the Consideration to Seller, and neither party shall have any obligation to the other.

Until closing, SELLER shall maintain the property as it existed on the effective date of this agreement and all loss or damage to the Property by fire or other casualty shall be at the risk of the SELLER. In the event of such damage, BUYER shall have the right to terminate this agreement.

At or before closing, SELLER shall pay all taxes on the Property, including those assessed or to be assessed for the current year; provided that current taxes are to be prorated as of the date of the delivery of the deed.

This transaction is subject to the approval of the City Council of the City of San Antonio through passage of an appropriate ordinance and shall not be binding on BUYER until passage of such ordinance.

This contract contains the entire agreement for the sale and conveyance of the Property, it being agreed and understood that there is no valid other written or verbal agreements regarding the Property between SELLER and the City, or any officer or employee of the City.

If SELLER fails to perform any of its obligations under this contract or if any of SELLER'S representations is not true and correct as of the Effective Date or on the Closing Date BUYER has the following remedies:

a. BUYER may terminate this contract by giving written notice to SELLER on or before the Closing Date and Closing Time.

b. BUYER may enforce specific performance of SELLER'S obligations under this contract.

c. BUYER may sue for its damages caused by SELLER'S default.

If BUYER fails to perform any of its obligations under this contract SELLER may, as its sole and exclusive remedy, terminate this contract by giving written notice to BUYER on or before the Closing Date and Closing Time.

All notices required to be given under this contract shall be deemed given upon the earlier of actual receipt or two days after being mailed by registered or certified mail, return receipt requested, or on the date prior to 5:00 p.m. CST, addressed to:

(a) If to Seller:
Carol and Charlie Kosarek
208 W. Evergreen
Boerne, TX 78006

(b) If to Buyer:
Sandy Jenkins
City of San Antonio
Parks Department
Post Office Box 839966
San Antonio, Texas 78283-3966

With a copy to:
Allison Elder
Elder Bray PC
755 E. Mulberry Suite 200
San Antonio, TX 78212

[REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have signed this instrument.

SELLER:

_____

By:_____

Date:_____

BUYER: City of San Antonio

_____

By:_____

Title:_____

Date: _____

SELLER:

_____

By:_____

Date:_____

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

WARRANTY DEED

Date: _____

Grantor: _____

Grantor's Mailing Address: _____

Grantee: City of San Antonio

Grantee's Mailing Address: P.O. Box 839966, San Antonio, Bexar County, Texas, 78283

Consideration: Ten and No/100 Dollars and other valuable consideration

Property: That certain _____ acres, more or less, which is more particularly described on Exhibit "A" which is attached hereto and made a part hereof for all purposes.

Reservations from and Exceptions to Conveyance and Warranty: Those matters set forth in Exhibit "B," attached hereto and made a part hereof for all purpose.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

GRANTOR:

_____

By:

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This instrument was acknowledged before me on the _____ day of _____ 2013 by _____.

_____
Notary Public, State of Texas

Notary's Commission Expires: _____

AFTER RECORDING, RETURN TO:

City of San Antonio
Parks Department
Post Office Box 839966
San Antonio, Texas 78283-3966

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