

AN ORDINANCE 2011-12-15-1037

AUTHORIZING THE ACQUISITION THROUGH NEGOTIATION OF FEE SIMPLE TITLE TO 50 SQUARE FEET OF PRIVATELY OWNED REAL PROPERTY LOCATED WITHIN NCB 2396 LOT 19, BLOCK 5 IN COUNCIL DISTRICT 5 FOR THE ZARZAMORA STREET AND SAN FERNANDO STREET TRAFFIC SIGNAL PROJECT, AN INFRASTRUCTURE MANAGEMENT PROGRAM PROJECT; DECLARING IT TO BE A PUBLIC PROJECT AND AUTHORIZING EXPENDITURES NOT TO EXCEED \$1,500.00 PAYABLE TO THE SELECTED TITLE COMPANY FOR LAND AND ASSOCIATED CLOSING COSTS.

* * * * *

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

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

SECTION 2. Payment in the amount not to exceed \$1,500.00 in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01305, FY 2012 Traffic Signal Installation, is authorized to be encumbered and made payable for cost associated with the acquisition of 50 square feet of privately owned real property located within NCB 2396 Lot 19, Block 5 in District 6.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

AB [12.15.11]
Item No. 17

SECTION 4. This ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under City Code of San Antonio § 1-15, in which case it becomes effective immediately.

PASSED AND APPROVED this 15th day of December 2011.



M A Y O R
Julián Castro

Attest:

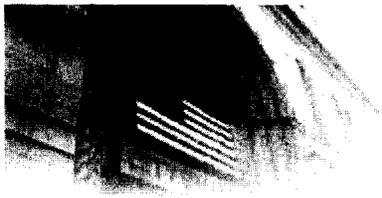


Leticia M. Vacek, City Clerk

Approved As To Form:

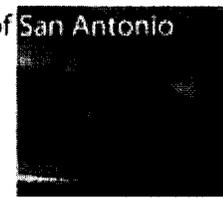


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 17

Name:	17						
Date:	12/15/2011						
Time:	11:08:48 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the acquisition through negotiation of fee simple title to 50 square feet of privately owned real property located within NCB 2396 Lot 19, Block 5 in Council District 5 for the Zarzamora Street and San Fernando Street Traffic Signal Project, an Infrastructure Management Program project; declaring it to be a public project and authorizing expenditures not to exceed \$1,500.00 payable to the selected title company for land and associated closing costs. [Peter Zanoni, Assistant City Manager; Mike Frisbie , Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x			x	
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

Attachment I

Real Estate Sales Contract

The Seller identified below agrees to sell the Property to the City of San Antonio under the terms and conditions of this agreement.

Table of Contents

1. Deadlines and Other Dates.....	3
2. Closing Documents.....	4
3. Exhibits.	4
4. Title and Survey.	4
5. Transfer of Possession, Due Diligence.....	4
6. Representations.....	5
7. Allocation of Closing Costs.	5
8. Closing.....	5
9. Prohibited Interest in Contracts.....	5
10. Public Information.....	6
Title Company Receipt for Contract.....	7
Exhibit A.....	8
Exhibit B.....	10
Exhibit C.....	11
Exhibit D.....	12

Authorizing Ordinance:

Parcel // Project: 18896 // Traffic signal at Zarzamora and San Fernando

Seller: Positive Point Properties, Ltd.

Address: PO Box 831026, San Antonio, Texas 78283

Property: Approximately 50 square feet of land more particularly described in the attached Exhibit A.

Title Company: First American Company

Address: 15303 Huebner Road, Building 15, San Antonio, Texas 78248

Phone: 210.222.1500

Purchase Price: \$350

Effective Date: The date the Title Company acknowledges a fully executed copy of this Agreement.

County for Performance: Bexar County, Texas

1. Deadlines and Other Dates.

1.01. Deadlines in this contract expire at 5:00 P.M. local time where the Property is located. If a deadline falls on a Saturday, Sunday, or national holiday, the deadline will be extended to the next day that is not a Saturday, Sunday, or national holiday. Time is of the essence.

Closing Date: 45 days after the Effective Date.

Closing Time: 10:00 A.M.

1.02. The deadlines may be altered by the mutual agreement of the parties. Buyer's consent may be made by the Assistant Director for Real Estate, Capital Improvements Management Services, without further authorization of City Council.

2. Closing Documents.

2.01. At closing, Seller will deliver the following items:

Special Warranty Deed

IRS Nonforeign Person Affidavit

Evidence of Seller's authority to close this transaction

Notices, statements, and certificates as specified in **Exhibit C**

The documents listed above are collectively known as the "Closing Documents."

2.02. At closing, Buyer will deliver the Purchase Price.

2.03. Unless otherwise agreed by the parties in writing before closing, the deed will be substantially in the form attached as **Exhibit D**. The deed may except from warranty those items contained in Schedule B of the latest effective title commitment. It may not except rights of parties in possession, survey-related matters, or other rights not arising out of a recorded instrument.

3. Exhibits.

The following are attached to and are part of this contract for all purposes as if fully set forth:

Exhibit A—Description of the Land

Exhibit B—Representations; Environmental Matters

Exhibit C—Notices, Statements, and Certificates

Exhibit D—Deed

4. Title and Survey.

4.01. *Review of Title.* The following statutory notice is provided to Buyer on behalf of the real estate licensees, if any, involved in this transaction: Buyer is advised that it should either have the abstract covering the Property examined by an attorney of Buyer's own selection or be furnished with or obtain a policy of title insurance.

4.02. *Encumbrances.* If Buyer's examination discloses clouds or encumbrances in the Property's title unacceptable to Buyer, Buyer may extend the closing date up to an additional 60 days to try to cure the clouds and encumbrances. If Buyer does not cure the clouds and encumbrances or determines in its discretion that doing so is uneconomical, Buyer may refuse to close. Buyer's cancellation does not impair Buyer's right later to take the Property in condemnation.

4.03. *Just Condemnation Value.* If Buyer condemns, then Seller acknowledges that just compensation for Buyer's taking the Property would be the Purchase Price. Seller declares the Purchase Price to be the fair market value of the Premises. This acknowledgment survives termination of this agreement.

4.04. Waiver of Repurchase Right. As to any condemnation by Buyer, Seller knowingly and intentionally waives the requirements of (A) Texas Property Code §§ 21.0111, 21.0112, and 21.023, which relate to information disclosure and (B) Texas Property Code §§ 21.101 through 21.103, which relate to repurchase. Seller's agreement to these terms survives Buyer's decision to condemn in lieu of proceeding under this contract.

5. Transfer of Possession, Due Diligence.

5.01. *Possession.* Buyer may take possession of the Property and begin construction immediately on execution of this contract.

5.02. *Extension.* Buyer may delay the closing date for an additional 60 days if it determines in its discretion that it needs to perform a Phase II environmental site assessment.

5.03. Termination. Buyer may terminate this contract before Closing without liability if it reasonably determines that the cost of environmental remediation will exceed 10% of the Purchase Price.

6. Representations.

The parties' representations stated in **Exhibit B** are true and correct as of the Effective Date and must be true and correct on the Closing Date.

7. Allocation of Closing Costs.

7.01. *Closing Costs.* Buyer pays all closing costs other than attorney fees for a lawyer, if any, hired to represent seller and any expenses Seller incurs outside the usual and customary costs ordinarily paid through a title company.

7.02. *Ad Valorem Taxes.* Ad valorem taxes for the Property for the calendar year of closing will be prorated between Buyer and Seller as of the Closing Date according to Section 26.11 of the Texas Tax Code. In no event is Buyer liable for any roll back taxes.

8. Closing.

This transaction will close at Title Company's offices at the Closing Date and Closing Time. At closing, the following will occur:

- a. *Closing Documents.* The parties will execute and deliver, or cause to be delivered, the Closing Documents.
- b. *Payment of Purchase Price.* Buyer will deliver the Purchase Price and other amounts that Buyer is obligated to pay under this contract to Title Company.
- c. *Disbursement of Funds; Recording; Copies.* Title Company will be instructed to disburse the Purchase Price and other funds in accordance with this contract, record the deed and the other Closing Documents directed to be recorded, and distribute documents and copies in accordance with the parties' written instructions.
- d. *Possession.* If not previously transferred, Seller will deliver possession of the Property to Buyer.
- e. *Failure To Deliver Indefeasible Title.* Buyer need not close if Seller cannot or does not deliver indefeasible title at closing.

9. Prohibited Interest in Contracts.

9.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

9.02. Seller warrants and certifies as follows:

- (i) Seller and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Seller has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

9.03. Seller acknowledges that City's reliance on the above warranties and certifications is reasonable.

10. Public Information.

Seller acknowledges that this instrument and all documents ancillary to it are public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public.

In Witness Whereof, the parties have caused their representatives to set their hands.

BUYER:

City of San Antonio,
a Texas municipal corporation

SELLER:

Positive Point Properties, Ltd.,
a Texas limited partnership
by and through its sole general partner

Positive Point Properties GP, LLC,
a Texas limited liability company

Name

Name

Signature

Signature

Title

Title

Date

Date

Approved As To Form:

City Attorney

Title Company Receipt for Contract

Parcel: 18896

Seller: Positive Point Properties, Ltd.

Address: PO Box 831026, San Antonio, Texas 78283

Buyer: City of San Antonio

Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Project: Traffic signal at Zarzamora and San Fernando

Title Company acknowledges receipt from Buyer of three fully executed counterpart originals of the Contract on the same date, with one fully executed original Contract being returned to each of Seller and Buyer.

First American Title Company

Name

Signature

Title

Date

Exhibit A

City of San Antonio
Intersection: Zarzamora Street & San Fernando Street

Property Description
Parcel 1

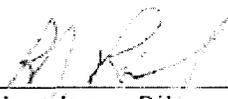
DESCRIPTION of a 0.0011 of an acre (±50 sq. ft) parcel of land situated in Lot 19, Block 5, N.C.B. 2396, in the City of San Antonio, recorded in Volume 1625 at Page 79 of the Deed and Plat Records of Bexar County, Texas, and being out of and a part of that property, conveyed to Positive Point Properties, Ltd., and recorded in Volume 12300 at Page 2472 of the Official Public Records of Bexar County, Texas. Said 0.0011 of an acre parcel of land being particularly described by metes and bounds as follows:

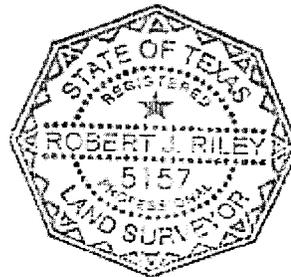
BEGINNING at a "mag" nail set in concrete at the North intersection of Zarzamora St. (57.8 Foot R.O.W.) and San Fernando St. (57.8 Foot R.O.W.), and being the Southwest corner of said Lot 19 and **POINT OF BEGINNING** of this parcel;

- 1) **THENCE**, North 06° 23' 26" East, with the East right-of-way line of said Zarzamora St. and the West lot line of said Lot 19, a distance of 10.00 feet to a "mag" nail set in concrete in the East right-of-way line of said Zarzamora St. and the West lot line of said Lot 19 for the North corner of the proposed cut-back and of this parcel;
- 2) **THENCE**, South 38° 55' 58" East, across said Lot 19 and with the proposed new right-of-way line, a distance of 14.06 feet to a "mag" nail set in concrete in the North right-of-way line of said San Fernando St. and South line of said Lot 19 for the East corner of proposed cut-back and of this parcel. Said point bears North 84° 15' 21" West, a distance of 146.20 feet from a 1/2 inch iron rod with cap marked RPLS #3976 found being the Southeast corner of Lot 21, Block 5, N.C.B. 2396, City of San Antonio, Subdivision;
- 3) **THENCE**, North 84° 15' 21" West with said existing North right-of-way line of said San Fernando St. and South line of said Lot 19, a distance of 10.00 feet to the **POINT OF BEGINNING**, containing within said boundaries 50 square feet or 0.0011 of an acre net new right of way of land gross, more or less.

All Bearings and coordinates are based on Texas Coordinate System NAD 83/93 (South Central Zone 4204). Controlling Line is the North ROW line of San Fernando St. Reference is made to plat of even date accompanying this metes and bounds description.

This description was prepared from a survey made on the ground, this 6th day of September, A. D., 2011.


Robert James Riley
Registered Professional Land Surveyor, No. 5157





SCALE 1"=20'

ZARZAMORA ST.
(57.8' R.O.W.)

LOT 15, B.L.S. ACB, 2002
VOL. 1502, PG. 79
PERFECT.

PLANTING PAPER PRODUCTS, LTD.
JUNE 17, 2006
VOL. 1504, PG. 242
DEPOSIT

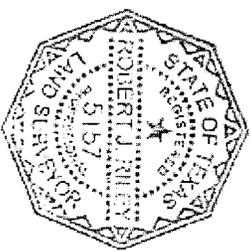
①
0.0011 ACRES
50.90 FT.

JOE M. & S. S. SCHAUB, 2006
VOL. 1502, PG. 79
PERFECT

SAN FERNANDO ST.
(57.8' R.O.W.)

NO.	BEARING	LENGTH
1	S 89° 58' 00" W	100.00
2	S 89° 58' 00" W	100.00
3	N 89° 58' 00" E	100.00
4	N 89° 58' 00" E	100.00

THIS DEED AND INSTRUMENT FROM A DEED BOOK...
RECORDED IN DEED BOOK...
DATE...



NOTES
MATERIAL HAS NOT SET IN CONCRETE
IF 1/2" JAIL AND FROM
DEPT. OF JUD. AND P.L.A. REQUIRES BEXAR COUNTY
PERMITS. OFFICIAL PUBLIC RECORDS BEXAR COUNTY
BEARING SURVEY TEXAS CHEROKEE SYSTEM AND
60793 (SOUTH CENTRAL ZONE 4204)
CONTROLLING LINE NORTH LINE OF SAN FERNANDO ST.
THIS SURVEY WAS PREPARED WITHOUT A CLIENT
TITLE COMMITMENT.

PLANTING	PERMITS	PERMITS
60793 AC	60311 AC	60327 AC
50.90 FT.		

STATE OF TEXAS
COUNTY OF BEXAR
ROBERT J. RILEY
SURVEYOR
5197
SAN ANTONIO, TEXAS

Exhibit B

Representations

Seller represents to Buyer that the following are true and correct as of the Effective Date and will be true and correct on the Closing Date.

1. *Authority.* Seller has authority to convey the Property to Buyer. This contract is, and all documents required by this contract to be executed and delivered to Buyer at closing will be, duly authorized, executed, and delivered by Seller.
2. *Litigation.* There is no litigation pending or threatened against Seller that might affect the Property or Seller's ability to perform its obligations under this contract.
3. *Violation of Laws.* Seller has not received notice of violation of any law, ordinance, regulation, or requirements affecting the Property or Seller's use of the Property.
4. *Condemnation; Zoning; Land Use; Hazardous Materials.* Seller has not received notice of any condemnation, zoning, or land-use proceedings affecting the Property or any inquiries or notices by any governmental authority or third party with respect to the presence of hazardous materials on the Property or the migration of hazardous materials from the Property.
5. *No Other Obligation to Sell the Property or Restriction against Selling the Property.* Except for granting a security interest in the Property, Seller has not obligated itself to sell the Property to any party other than Buyer. Seller's performance of this contract will not cause a breach of any other agreement or obligation to which Seller is a party or to which it is bound.
6. *No Liens.* On the Closing Date, the Property will be free and clear of all mechanic's and materialman's liens and other liens and encumbrances of any nature except the Permitted Exceptions, and no work or materials will have been furnished to the Property that might give rise to mechanic's, materialman's, or other liens against the Property other than work or materials to which Buyer has given its consent.
7. *Leases.* On the Closing Date, the Property will be free and clear of all Leases, and no person, other than Buyer, will have a claim to possession or occupancy of the Property by, through, or under Seller or its predecessors in interest.
8. *Wells.* There are no water or other wells on the property, capped or uncapped, registered or unregistered.

Exhibit C

Notices, Statements, and Certificates

The following notices, statements, and certificates are attached for delivery to Buyer, and Buyer acknowledges receipt of the notices, statements, and certificates by executing this contract:

If applicable, notice concerning underground storage tanks, described in section 334.9 of title 30 of the Texas Administrative Code

Exhibit D

[This page intentionally left blank.]

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before it Is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

**SPECIAL WARRANTY DEED
(AND ASSIGNMENT OF CLAIMS)**

Authorizing Ordinance:

Parcel: 18896

Grantor: Positive Point Properties, Ltd.

Grantor's Mailing Address: PO Box 831026, San Antonio, Texas 78283

Grantee: City of San Antonio

Grantee's Mailing Address (including county): P.O. Box 839966, San Antonio, Texas 78283-3966 (Attention: Director, Capital Improvement Management Services) (Bexar County)

Consideration: \$10 in hand paid and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

Property: Approximately 50 square feet of land more particularly described in the attached Exhibit A, which is incorporated herein for all purposes as if fully set forth.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, **grants, sells, and conveys to Grantee**, together with all and singular the rights and appurtenances thereto in anywise belonging, to have and to hold to Grantee, and Grantee's heirs and 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, by, through, or under Grantor, but not otherwise.

When the context requires, singular nouns and pronouns include the plural and plural ones include the singular.

Assignment of Claims

In addition to the conveyance of real estate addressed above, Grantor hereby assigns to Grantee all choate and inchoate statutory and common-law claims, if any, it may have against its predecessors in title and against any other potentially responsible person for environmental contamination of the Property now known or later found to exist.

Positive Point Properties, Ltd.,
a Texas limited partnership
by and through its sole general partner

Positive Point Properties GP, LLC,
a Texas limited liability company

Name

Signature

Title

Date

State of Texas §

County of Bexar §

This instrument was acknowledged before me this date by _____,
_____ of Positive Point Properties GP, LLC, a Texas limited liability company, as
the sole general partner of Positive Point Properties, Ltd., a Texas limited partnership, on behalf of those
entities and in the capacities stated.

Date: _____

Notary Public, State of Texas

Approved as to Form:

City Attorney

After recording, please return to:
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(Attention: Director, Capital Improvement Management Services)

Exhibit A

City of San Antonio
Intersection: Zarzamora Street & San Fernando Street

Property Description Parcel 1

DESCRIPTION of a 0.0011 of an acre (± 50 sq. ft) parcel of land situated in Lot 19, Block 5, N.C.B. 2396, in the City of San Antonio, recorded in Volume 1625 at Page 79 of the Deed and Plat Records of Bexar County, Texas, and being out of and a part of that property, conveyed to Positive Point Properties, Ltd., and recorded in Volume 12300 at Page 2472 of the Official Public Records of Bexar County, Texas. Said 0.0011 of an acre parcel of land being particularly described by metes and bounds as follows:

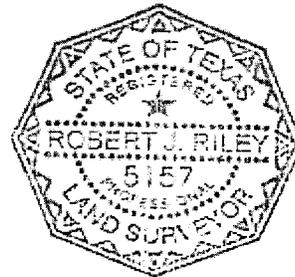
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This description was prepared from a survey made on the ground,
this 6th day of September, A. D., 2011.


Robert James Riley
Registered Professional Land Surveyor, No. 5157





ZARZAMORA ST.
(57.8' R.O.W.)

LOT 15, B.L.S. 408, 0386
VOL. 1502, PG. 79
P.P.S. 011

①
0.0011 ACRES
50.50' FT.

POSITIVE POINT EVIDENCES, LTD.
JULY 17, 2006
VOL. 1500, PG. 8579
P.P.S. 011

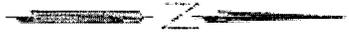
LOT 19, B.L.S. 408, 0398
VOL. 1502, PG. 79
P.P.S. 011

SAN FERNANDO ST.
(57.8' R.O.W.)

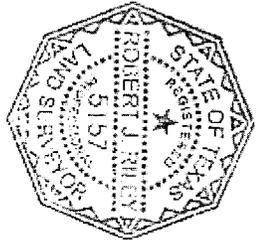
LINE	BEARING	DISTANCE
1	N 0° 00' 00" E	101.0
2	S 2° 00' 00" W	14.25
3	N 89° 59' 59" W	101.0

This and all other measurements were made on the ground.
This Survey is in compliance with the laws of the State of Texas.

Surveyed by: James R. King
Registered Professional Surveyor, State of Texas
No. 119



NOTES:
1. 100' WIDE SET IN CONCRETE
2. 1/2" IRON ROD EMBED
3. 1/2" IRON ROD AND PLAT RECORDS BEAR COUNTY
DEPT. OF PUBLIC SAFETY RECORDS BEAR COUNTY
4. BEARING SURVEY TEXAS APPROPRIATE SYSTEM MAP
5. 60' 00" (COUNTY GENERAL ZONE 4204)
6. CONTROLLING LINE NORTH LINE OF SAN FERNANDO ST.
THIS SURVEY WAS PREPARED WITHOUT A CURRENT
TITLE COMMITMENT.



Sheet 1 of 2

EXISTING	TAPPING	REMAINING
0.0736 AC.	0.0011 AC.	0.0725 AC.
50.50' FT.		

NO. 119 W. WAY SKETCH
SHEWAN-FRENCH, P.C.
TAPING
ENHANCED

CITY OF SAN ANTONIO
ZARZAMORA - SAN FERNANDO
PLAT SURVEY, INC. 040 011 2011