

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ASSET MANAGEMENT DEPARTMENT**

TO: Mayor and City Council

FROM: Rebecca Waldman, Director, Department of Asset Management

THROUGH: Terry M. Brechtel, City Manager

COPIES: Erik J. Walsh, Assistant to the City Manager; Robert Ojeda, Fire Chief, San Antonio Fire Department; Mark H. Webb, Assistant Director, Department of Asset Management; File

SUBJECT: Sale of the property formally known as Fire Station #12

DATE: August 7, 2003

SUMMARY AND RECOMMENDATIONS

This Ordinance authorizes the execution of an Earnest Money Contract with Mitchell Whiddon and A. Scott Rosales for the sale of the City owned property located at 1102 S. Flores, formally known as Fire Station #12, as shown in Exhibit "A" attached hereto, for the purchase price of \$175,000.00.

Staff recommends approval.

BACKGROUND

In 2001 Fire Station #12 was vacated for use by the San Antonio Fire Department. According to the Fire Department's Master Plan, this station was surplus to their needs. As such, all City Departments were canvassed for possible reutilization of the property, which yielded no interest in future use by the City. Staff then met with surrounding property owners and interested citizens to discuss the most appropriate zoning for the property. Based on those discussions, the property was rezoned to facilitate more neighborhood friendly uses and to preserve the historic significance of the building. Prior to advertising the property for sale, an appraisal of the property was obtained in order to ascertain the value of the property for the purpose of establishing a minimum bid amount. After accepting sealed bids on the property as requested by the Invitation for Bid, and in accordance with the Texas Local Government Code, a high bid of \$175,000.00 was received for the sale of the property.

FISCAL IMPACT

Under the terms of the Earnest Money Contract, the Buyer has a 30-day period in which to perform inspections of the property. If the Buyer decides not to complete the purchase based on the results of these inspections, the \$100 inspection fee, previously collected by the City, will be

forfeited. If the Buyer does not complete the purchase for any reason other than the results of the inspections, it will forfeit the entire earnest money deposit of \$17,500.00. The purchase price of \$175,000.00 exceeds the appraised value and funds will be utilized for Fire Department capital improvement projects. The fees due from the City at the closing of this transaction are estimated to be less than \$100.00.

POLICY ANALYSIS

The sale and redevelopment of this property is in accordance with the San Antonio Fire Department's Master Plan and will serve to further enhance the neighborhood as well as placing the property back on the property tax rolls. This action is consistent with prior City Council direction to sell property no longer needed by the City.

COORDINATION

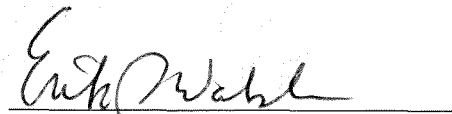
The agenda item has been coordinated with City Attorney's Office and Fire Department.

SUPPLEMENTARY COMMENTS

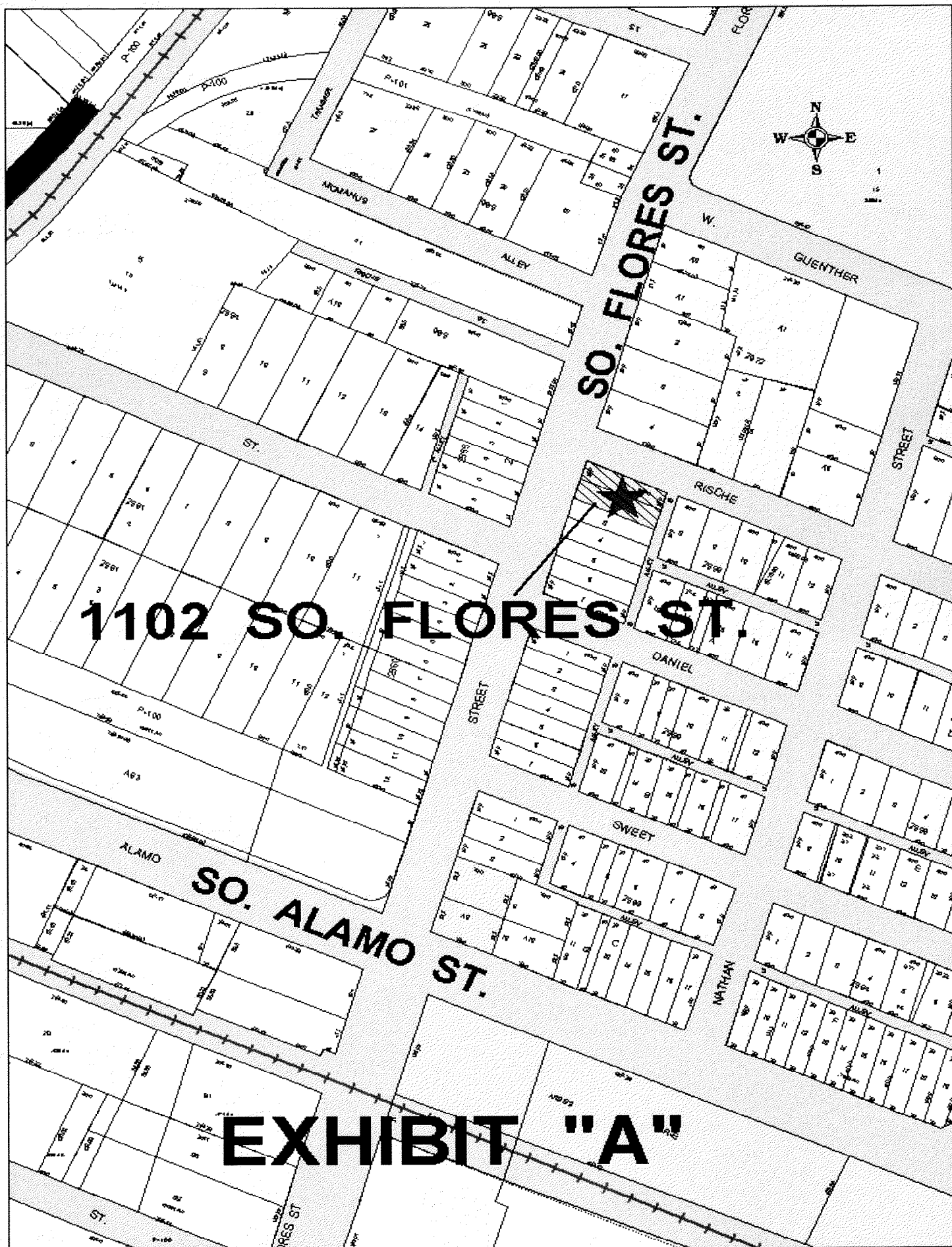
The Discretionary Contracts Disclosure Form is not necessary for this contract. The Planning Commission has recommended the sale to the City Council at its regular meeting of June 25, 2003.



Rebecca Waldman, Director
Department of Asset Management



Erik J. Walsh
Assistant to the City Manager



1102 SO. FLORES ST.

SO. ALAMO ST.

EXHIBIT "A"

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK
03 JUN - 6 AM 10:38

STATE OF TEXAS)
)
COUNTY OF BEXAR)

EARNST MONEY CONTRACT

This Earnest Money Contract ("Contract") is made and entered into by and between the City of San Antonio, as Seller ("CITY"), a Texas Municipal Corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____, 2003, and Whiddon & A. Scott Rosales ("BUYER") acting by and through its duly authorized representative (collectively the "Parties").

WHEREAS, CITY currently owns a tract of land as described below (“Property”); and

WHEREAS, it is the desire of CITY to sell and the desire of BUYER to purchase this Property together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties, as noted below, with BUYER's full understanding and agreement that the Property is being sold in its "**AS-IS, WHERE-IS AND WITH ALL FAULTS CONDITION**"; and

WHEREAS, CITY is authorized to convey this property for fair market value pursuant to §272.001 of the Texas Local Government Code; and

WHEREAS, BUYER desires to acquire the Property for fair market value as determined through a sealed bid process conducted by CITY; **NOW THEREFORE**, in consideration of the covenants, conditions and provisions set forth herein, the parties hereto agree as follows:

I. PURPOSE

1.01 The purpose of this Contract is to set forth the terms and conditions by which CITY will convey and BUYER will accept fee simple title to the Property.

II. PROPERTY/ CONSIDERATION/ EARNEST MONEY

2.01 **PROPERTY.** Pursuant to Texas Local Government Code Chapter 272, CITY, for the consideration described in paragraph 2.02 of this Contract and subject to the terms and conditions hereof, hereby contracts to GRANT, SELL and CONVEY to BUYER by Deed Without Warranty and subject to the designated exceptions, fee simple title to the following described property situated within the corporate limits of the City of San Antonio, Bexar County, Texas, to wit:

NCB 2556, Block A, Lot 1 & 2, together with any and all improvements, structures and fixtures located thereon, and with all rights, privileges, rights of way, and easements appurtenant thereto, unless reserved unto other parties, pursuant to the Title Commitment and subsequent Title Policy referenced hereafter (collectively the "Property").

The conveyance shall be subject to any and all recorded and unrecorded easements and any and all restrictions of record as well as certain covenants and restrictions as set out in paragraph 6.02 (a) of this Contract. CITY agrees to and shall place of record at or before closing any existing unrecorded easements within the CITY's knowledge and control, if any.

2.02 **CONSIDERATION**. BUYER agrees to pay as consideration and CITY agrees to accept the payment of \$ 175,000. - ("sales price"), which the PARTIES agree to be the Property's fair market value ("FMV"). The FMV shall be paid by BUYER in one lump sum at closing.

2.03 **EARNEST MONEY**. Not later than ten (10) days after the date of the Ordinance referenced above, CITY will deposit on behalf of the BUYER, the previously collected amount of 10% of the total sales price set forth in paragraph 2.02, as earnest money (the "Earnest Money") with Alamo Title Company, 112 E. Pecan Street, Suite 125, San Antonio, Texas 78205, (210) 227-0231 ATTN: J. Christopher Varley, Vice-President ("Escrow Agent"), and in the form of a cashier's check, or a certified check. The Escrow Agent will deposit the Earnest Money in an interest-bearing account at a federally insured financial institution, with interest to be credited to BUYER, and to be distributed in accordance with the terms hereof.

III. INSPECTION

3.01 In consideration of the sum of \$100.00 and other good and valuable consideration, CITY hereby consents to allow BUYER and/or its designated representative(s) to enter upon the Property to conduct inspections for a period of thirty (30) days after the Effective Date of this Contract. BUYER shall notify CITY of its intent to inspect no less than twenty-four (24) hours in advance.

3.02 At BUYER's expense, BUYER may conduct tests and studies of the Property as provided in **ARTICLE IV.** of this Contract. BUYER agrees that it will not damage or impair the Property in any way as a result of its activities thereon. In the event that damage or impairment of the Property does occur due to BUYER's activities, BUYER agrees to repair and/or restore the property at its sole cost and expense.

3.03 The consideration stated in paragraph 3.01 is tendered by BUYER and accepted by CITY as independent of and apart from the sales price of the Property set out in **ARTICLE II.** of this Contract. It is non-refundable and shall NOT be credited toward the sales price at the time of Closing.

IV. CONTINGENCIES

4.01 Within the parameters of **ARTICLE III.** of this Contract, CITY understands and agrees that the proposed acquisition of the Property by BUYER is contingent upon the results of certain tests and studies BUYER may perform or have performed, in its own discretion and at its own expense. BUYER or its designated representative(s) may perform a soil test and a Phase I Environmental Assessment in order to (1) determine the presence of any "hazardous substances," "hazardous materials", or "toxic substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act; the Resources Conservation and Recovery Act, all as amended, as well as, State, and local laws, or (2) raise any other environmental or other concerns which would affect BUYER's decision to proceed with purchase of the Property.

4.02 BUYER may conduct any and all inspections of the Property, including but not limited to those authorized in paragraph 4.01, and determine the results up to and including the thirty (30) day period after the Effective Date of this Contract.

4.03 CITY agrees to provide BUYER copies of all tests, studies, and reports pertaining to the Property in its possession, if any, including any environmental tests, studies and reports prior to BUYER's entry onto the Property for purposes set out under this **ARTICLE IV.**

4.04 BUYER agrees to provide CITY legible copies of any and all tests, studies and reports on the Property prepared by the BUYER or at its direction or on its behalf.

4.05 If BUYER, in BUYER's sole discretion, is not satisfied with the results of any or all of the inspection(s) performed, the environmental remediation work performed by CITY, if any, or the costs necessary for BUYER to perform its own remediation work, BUYER may terminate this Contract by giving written notice of termination to CITY on or before the thirtieth (30th) day after the Effective Date of this Contract. In the event of termination under this paragraph, the Earnest Money as referenced in paragraph 2.03 will be refunded by CITY to BUYER, and each Party shall be responsible for its own costs and expenditures incurred up to and including the date of termination except that the amount set out in paragraph 3.01 shall be retained by CITY, as the separate consideration referenced above. Under no circumstances, does this Contract create or place any duty of remediation on either Party.

4.06 If BUYER does not terminate as provided in paragraph 4.05 of this Contract, BUYER accepts the Property in its present **"AS-IS, WHERE-IS AND WITH ALL FAULTS CONDITION."**

4.07 The Parties further agree and understand that this transaction is contingent upon and requires formal approval of the City Council of the City of San Antonio prior to the Closing Date. Failure to obtain such approval in a timely manner will terminate this transaction in its entirety and each Party shall be responsible for its own costs and expenditures incurred up to and including the date of termination. Termination of this Contract, under this paragraph, shall be the sole and exclusive remedy available to the Parties.

V. TITLE POLICY AND SURVEY

5.01 CITY, at BUYER's expense, will furnish BUYER an Owners Policy of Title Insurance (the "title policy") issued by Alamo Title Company, 0264112 E. Pecan Street, Suite 125, San Antonio, Texas 78205, (210) 227-0231 ATTN: J. Christopher Varley, Vice-President ("Escrow Agent"). The policy will be in the amount of the sales price, dated at or after Closing, insuring BUYER against loss under the title policy, subject only to (1) those title exceptions permitted by this Contract or as may be approved by BUYER in writing, and (2) the standard printed exceptions contained in the promulgated form of title policy unless this Contract provides otherwise. The standard printed exception as to area boundaries will be deleted from the title policy at the expense of BUYER, except for "shortages in area". Further, BUYER may object to any restrictive covenants on the property within the time period required under Paragraph 5.03. Within thirty (30) business days after the Effective Date of this Contract, CITY will furnish BUYER a commitment for title insurance (the "commitment") including copies of recorded documents evidencing title exceptions. CITY authorizes the Title Company to deliver the commitment and related documents to BUYER at BUYER's address.

5.02 Within thirty (30) business days after the Effective Date of this Contract, CITY, at BUYER's expense, and in cooperation with BUYER, shall cause to have done a survey of the property by a Registered Land Surveyor of BUYER's choice and the surveyor shall deliver a true and correct copy of same to BUYER and to CITY. The survey must be performed by a Registered Land Surveyor.

5.03 Within fifteen (15) days after BUYER receives all of the required documents described in Paragraphs 5.01 and 5.02, BUYER may object in writing to matters disclosed in the items if:

- a. the matters disclosed constitute a defect or encumbrance to title other than those permitted by this Contract or liens that CITY will satisfy at closing or BUYER will assume at closing; or
- b. the items show that any part of the Property lies in a 100-year flood plain.

CITY, may, but is not obligated to, cure BUYER's timely objections within twenty (20) CITY business days after CITY receives the objections and subject to the CITY Council appropriating funds for such cure. The Closing Date will be extended as necessary to cure the objections. If CITY fails to cure by the time required, BUYER may terminate this Contract by providing five (5) days written notice to CITY within five (5) days after the time by which CITY must cure the objections. If BUYER terminates under this paragraph, the Earnest Money, less the independent consideration paid for BUYER's right to inspect under ARTICLE III, will be refunded to BUYER, as BUYER's sole remedy under this paragraph.

5.04 BUYER's failure to timely object or terminate under this ARTICLE V. is a waiver of BUYER's right to object except that BUYER will not waive the requirements in Schedule C of the commitment pertaining to the satisfaction of all liens and authority requirements which CITY hereby agrees to cure so that they do not appear as exceptions to the owners policy of title insurance issued at closing.

VI. CLOSING AND ESCROW

6.01 Subject to the contingencies set out under ARTICLE IV. of this Contract, the Closing of this transaction will be on or before the forty-fifth (45th) day following the Effective Date of this Contract as evidenced below, or within ten (10) days after objections to title have been cured, whichever date is later (the "Closing Date"). The Closing Date may be extended by mutual consent of the Parties. If either Party fails to close by the Closing Date, the non-defaulting Party may exercise the remedies in ARTICLE IX.

6.02 At Closing, the following documents shall be delivered or caused to be delivered to the appropriate Party:

- a. Deed without Warranty duly executed by CITY to BUYER subject to the exceptions and provisions of this Contract including, but not limited to, all covenants, restrictions and easements of record and those which are open and obvious on the Property;
- b. tax statements showing no delinquent taxes on the Property;
- c. an assignment of any and all leases to or on the property;
- d. to the extent assignable, an assignment to BUYER of any license permits and other entitlements related to the Property;
- e. evidence that the person executing this Contract is legally capable and authorized to bind their respective Party;
- f. Copies of Documentation authorizing this transaction by the respective Governing Bodies of the Parties, as applicable.
- g. BUYER will pay the sales price in good funds acceptable to the escrow agent;
- h. both Parties will execute and deliver any notices, statements, certificates, or other document required by this Contract or by law necessary to convey the Property and close the sale.

6.03 Except as provided in this Contract or by law, the Parties agree to pay at Closing any and all outstanding costs, fees and other expenses incurred by said Party with respect to this transaction, if any, including any attorney's fees incurred, with each Party liable for the payment of its respective attorney's fees.

6.04 At Closing, the Earnest Money must first be applied to pay the amount set out in paragraph 2.02 to the CITY, then any cash down payment, if any, then to BUYER's closing costs, and any excess will be refunded to BUYER.

6.05 If both Parties make written demand for the Earnest Money, Escrow Agent may require payment of unpaid expenses incurred on behalf of the Parties and a written release of liability of escrow agent from all Parties.

6.06 If one Party makes written demand for the Earnest Money, Escrow Agent will give notice of the demand by providing the other Party a copy of the demand. If Escrow Agent does not receive written objection to the demand from the other Party within thirty (30) days after the date Escrow Agent sent the demand to the other Party, Escrow Agent may disburse the Earnest Money to the Party making the demand, reduced by the amount of the unpaid expenses incurred on behalf of the Party receiving the Earnest Money and Escrow Agent may pay the same to the creditors.

6.07 The Parties agree to each pay one-half (1/2) of any escrow fee. CITY will pay the costs associated with preparation of the Deed Without Warranty and tax statements or certificates. Except as otherwise provided in this Contract, BUYER will pay for any and all other expense or costs to satisfactorily complete this transaction, including recording fees for recording the Deed Without Warranty and recording any other instruments which must be filed of record.

6.08 If this sale or BUYER's use of the property after Closing results in additional assessments of taxes for periods before Closing, the assessments will be the obligation of BUYER. This paragraph survives Closing.

VII. REPRESENTATIONS AND COVENANTS

7.01 The Parties represent that they each have the full right, power, and authority to execute and deliver this Contract and to consummate the purchase and sale transaction provided for herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to third parties.

7.02 CITY represents that all bills and other payments due with respect to the ownership, operation, and maintenance of the Property have been paid or will be paid prior to the Closing Date.

7.03 The CITY represents that until the Closing Date, CITY will: (i) maintain and operate the Property in accordance with good and prudent business practices; (ii) continue all insurance policies or contracts, if any, relative to the Property, in full force and effect, (iii) not commit or permit to be committed any waste of the Property or introduce any environmental hazards thereto; and (iv) not, without the prior written consent of BUYER, enter into any agreement or instrument or take any action that would encumber the Property before the Closing date that would be outside the normal scope of maintaining and operating the Property.

7.04 CITY represents that, to the best of its knowledge and belief, there are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of CITY, threatened that could materially adversely affect the ownership, operation, or maintenance of the Property or CITY's ability to perform hereunder.

7.05 Unless informed to the contrary within ten (10) business days of the Effective Date of this Contract, the CITY represents the following:

- a. To the best of the CITY's knowledge, there are no adverse or other parties in possession of the Property and no person or entity has been granted any license, lease or other right relating to the use or possession of the Property or any part thereof;
- b. To the best of CITY's knowledge, there are no contracts or other agreements for services, supplies or materials affecting the use, operation or management of the Property.

- c. To the best of CITY's knowledge, there are no other sales contracts outstanding for acquisition or lease of the Property.

7.12 Each of the above representations is true and correct and shall survive closing.

VIII. POSSESSION

8.01 CITY shall deliver and BUYER agrees to accept possession and control of the Property on the date of funding in its present "AS-IS WHERE-IS AND WITH ALL FAULTS CONDITION", except as otherwise agreed herein.

IX. DEFAULT AND REMEDIES

9.01 If BUYER fails to comply with this Contract, BUYER is in default and CITY may either pursue any and all legal remedies available to it, including but not limited to specific performance or terminate this Contract and receive the Earnest Money as liquidated damages, thereby releasing the Parties from this Contract.

9.02 If CITY fails to comply with this Contract, CITY is in default and BUYER may either pursue any and all legal remedies available to it, including but not limited to specific performance or terminate this Contract and receive the Earnest Money, less the sum set out in Paragraph 3.01, as liquidated damages, thereby releasing the Parties from this Contract.

9.03 Paragraphs 9.01 and 9.02 shall apply upon failure of the respective Party to comply with this Contract; however, both Parties acknowledge that other limited remedies for termination are provided elsewhere in this Contract.

X. NONWAIVER

10.01 Unless otherwise expressly provided herein, no waiver by the Parties of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to BUYER or CITY upon any breach under this Contract shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by BUYER or CITY of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to BUYER or CITY either hereunder or by law shall be cumulative and not alternative, and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law, unless expressly provided to the contrary herein.

XI. FURTHER ACTS, DEEDS AND ASSURANCE

11.01 In addition to the acts and deeds recited herein and contemplated to be performed under this Contract, the Parties shall further perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing, any and all further acts, deeds and assurances as may reasonably be required to consummate the transaction contemplated hereunder.

XII. RULES OF CONSTRUCTION

12.01 The Parties acknowledge that they have each reviewed and have had their respective legal counsel review this Contract and both Parties hereby agree that the normal rule of construction which holds that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any Addenda or Exhibits hereto.

XIII. SEVERABILITY

13.01 In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; it is also the intention of the Parties hereto that in lieu of each clause or, provision of this Contract 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.

XIV. NOTICE

14.01 For the purposes of this Contract, all written communication among the parties to this Contract shall be deemed sufficient if either mailed, registered or certified mail, postage prepaid or if it is hand-delivered, to the addresses set forth below.

BUYER: A. Scott Rosales & Mitchell Whiddon
3400 Far View Dr
Austin, TX 78730

CITY: City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283
(or hand-delivered to second floor, City Hall, Military Plaza, 100 block S. Flores, San Antonio, Texas)

with copies to the Director of the Department of Asset Management at the same mailing address, but physically located on the second floor of the Municipal Plaza Building.

14.02 Any change to the address under paragraph 14.01 must be made in writing and delivered to the other Party's last known address within five (5) business days of such change.

XV. CONDEMNATION

15.01 If before Closing, condemnation proceedings are commenced against any part of the Property, BUYER may:

- a. terminate this Contract by providing fifteen (15) days written notice to CITY after BUYER is advised of the condemnation proceedings by CITY and the Earnest Money will be refunded to BUYER;
- b. appear and defend in the condemnation proceedings and any reward will, at BUYER's election, belong to e CITY and the sales price will be reduced by the same amount or belong to BUYER and the sales price will not be reduced.

XVI. CAPTIONS

16.01 The captions contained in this Contract are for convenience only and in no way limit or enlarge the terms or conditions of this Contract.

XVII. TIME OF THE ESSENCE

17.01 Time is of the essence in the performance of this Contract. The Parties require strict compliance with the times for performance.

XVIII. AMENDMENT

18.01 Except as otherwise provided in this Contract, no amendment, modification, deletion, release, termination or extension of, alteration, variance or change in, or supplement to, the provisions of this Contract shall be valid and effective or otherwise binding on the Parties hereto, unless, and until, such amendment, etc. shall have been reduced to writing, authorized by formal action by the Parties respective governing bodies and executed by the Parties.

XIX. CONDITIONED UPON APPROVAL

19.01 Notwithstanding any provision to the contrary herein, this Contract is expressly subject to and conditioned upon its formal acceptance and approval of the Parties' governing bodies as evidenced by the passage of both a CITY OF SAN ANTONIO Ordinance by the City Council and a corporate resolution by BUYER's Board of Directors, if BUYER is a corporation, or other evidence, satisfactory to Escrow Agent, if BUYER is another type of entity.

XX. APPLICABLE LAW

20.01 This Contract has been negotiated, entered into and is performable in Bexar County, Texas, and shall be governed and interpreted according to the laws of the State of Texas.

20.02 The Parties agree that venue of any court action brought directly or indirectly by reason of this Contract should lie in Bexar County, Texas.

XXI. AUTHORITY

21.01 The undersigned signatories for BUYER and CITY each represent that they are empowered and fully authorized to sign this Contract on behalf of BUYER and CITY in accordance with the terms and conditions stated herein.

XXII. ASSIGNMENT

22.01 No Party hereto shall make, in whole or in part, any assignment of this Contract or any obligation hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, Buyer may assign this Contract to any entity controlled by, controlling or under common control with Buyer without first obtaining the CITY's consent but shall provide notice of the assignment to CITY and the escrow agent no less than ten (10) days prior to closing, and further, upon any such assignment, Buyer agrees and understands that Buyer shall not be released from the obligations of this Contract.

XXIII. GENDER

23.01 Words of gender used in this Contract shall be held and construed to include any other gender and words in the singular shall be held to include the plural, unless the context otherwise requires.

XXIV. BROKER FEES

24.01 All obligations of the Parties for payment of Brokers fees are contained in separate written agreements.

XXV. ENTIRE AGREEMENT

25.01 The Parties hereto expressly acknowledge and agree that, with regard to the subject matter of this Contract and the transactions contemplated herein (1) there are no oral agreements between the Parties hereto; and (2) this Contract, including exhibits and addenda (a) embodies the final and complete agreement between the parties; (b) supersedes all prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, courses of dealings, representations, statements, assurances and understandings, whether oral or written.

XXVI. DISPUTE RESOLUTION

26.01 The Parties agree to negotiate in an effort to resolve any dispute related to this Contract that may arise. If the dispute cannot be resolved by negotiation, the Parties agree to submit the dispute to non-binding mediation before resorting to litigation and will equally share the costs of a mutually acceptable mediator.

XXVII. EFFECTIVE DATE

27.01 The Effective Date of this Contract for the purpose of performance of all obligations is the date the Earnest Money set out in paragraph 2.03 is receipted by the Escrow Agent.

EXECUTED IN TRIPLICATE COPIES, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL on this the 5th day of June A. D., 2003.

CITY:

BUYER:

BY: _____

BY: _____

Name: _____

Title: _____ City Manager

ATTEST:

ATTEST: (if applicable)

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY