

CITY OF SAN ANTONIO  
DEPARTMENT OF ASSET MANAGEMENT  
INTERDEPARTMENTAL CORRESPONDENCE

ITEM NO. 12

**TO:** Mayor and City Council

**FROM:** Rebecca Waldman, Director, Department of Asset Management

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Erik J. Walsh, Milo Nitschke, Andrew Martin, file

**SUBJECT:** Ordinance authorizing the execution of a Consent to Assignment of a Ground Lease Agreement to Fairmount Investment LLC and approving a License to use public-right-of-way.

**DATE:** April 8, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance approves: 1) a Consent (and Release) in connection with an Assignment of a Ground Lease Agreement, granting the City's consent, as Lessor, to assign the leasehold interest of Patriot American Hospitality Partnership, L.P., the current Lessee, to Fairmount Investments LLC, a Texas limited liability company, to use City-owned land under the Fairmount Hotel located in City Council District 1, at 401 S. Alamo Street; 2) Ground Lease Estoppel-Lessor Estoppel Certificate; 3) a Consent and Non-Disturbance of Lessor, as requested by North American Life Insurance Company of Texas, as Lender ("Mortgagee") for Fairmount Investments, LLC; 4) a consent for Fairmount Investments LLC to enter into a new Sublease Agreement with HHC TRS OP LLC, as Sublessor, which Sublessor derives its rights by agreement(s) with Highland Hospitality, L.P., owner of the nearby Plaza San Antonio-Marriott Hotel to use a portion of the property leased to them (German- English School Lease) by the City for parking purposes (and incorporating a Termination of the existing Sublease Agreement); 5) termination of existing License Agreement with Patriot American Hospitality Partnership, L.P., and 6) a new License Agreement granting Fairmount Investments LLC, a ten-year License to use public right-of-way to repair, maintain, and replace 2 porches on the older portion of the Fairmount Hotel and the "porte cochere", on the hotel's new addition, the porches and "porte cochere" being on Alamo Street, and the four "areaways" (extensions) on the Nueva Street side of the Fairmount Hotel, for a consideration of \$5,000.00, plus 7) any other necessary documents, as first reviewed and approved by the City Attorney, in connection with closing of the sale of the Fairmount Hotel from Patriot American Hospitality Partnership, L.P., to Fairmount Investments LLC; all City approvals being subject to written confirmation of the closing of such sale.

Staff recommends approval.

**BACKGROUND INFORMATION**

In 1985, the City entered into a Ground Lease Agreement with C. Thomas Wright for the city-owned land beneath the Fairmount Hotel. Following a series of amendments and assignments, Patriot American Hospitality Partnership, L.P. has become the current Lessee with a 25-year term that ends September 30, 2017 and a 25-year option to renew, at Tenant's option. The

Lessee pays rent to the City based on the greater of \$35,000.00 per year or established gross revenue thresholds. Last year, the Lessee paid \$36,646.00 in rent to the City. In addition, the City entered into a License Agreement in 2003 with Fairmount Hotel to use city right-of-way for some improvements to the hotel. License Agreements are not assigned, so a new License Agreement will be executed as part of this transaction.

Patriot American Hospitality Partnership, L.P. has entered into a contract to sell the Fairmount Hotel to Fairmount Investments LLC, and has requested the following of the City of San Antonio in conjunction with this pending sale:

- **Consent (and Release) in connection with an Assignment of Ground Lease.** Under the terms of the lease the City's approval of this assignment and release of the seller is based on the financial and management capabilities of the proposed buyer. The Fairmount Hotel will be acquired by Fairmount Investment LLC, a newly formed entity wholly owned by R. D. Tips Inc. R. D. Tips is the parent company of Mission Park, the largest privately owned cemetery funeral operation in Texas, and MTM Life Insurance Company, a pre-need funeral service provider. The hotel operations will be managed by The Lancaster Group, Inc. a hotel management company from Houston specializing in the operation of small luxury hotels and resorts and the repositioning and renovation of historic properties. The Ground Lease being assigned contains default remedies that protect City property in the event the Lessee fails to perform on the lease obligations, including a provision that the non-payment of any monies owed to the City by the Lessee is cause for default, if not timely cured. A Consent and Non-Disturbance of Lessor will also be executed, as requested by Fairmount Investments LLC's Lender and Mortgagee, North American Life Insurance Company of Texas.
- **Ground Lease Estoppel-Lessor Estoppel Certificate**, requested by the seller and buyer and routine in sales where leases are involved.
- **Consent to Parking Sublease.** The City leases the German-English School and contiguous land to the owners of the Plaza San Antonio-Marriott Hotel. A portion of this property located behind the Fairmount Hotel on Nueva Street, has been subleased to Patriot American for parking purposes. That sub-lease expired and has been continuing on a month-to month basis. A new Sublease is being executed and the parties have requested the consent of the City, as required by the terms of the City's Lease with Plaza San Antonio, which new Sublease will also formally terminate the existing Sublease.
- **License Agreement.** Patriot American Hospitality Partnership, L.P. also had a license agreement with the City to encroach into city public right-of-way to repair, maintain, and replace the porches and the "porte cochere" and four "areaways" (extensions) on the Fairmount Hotel. Since the existing License Agreement is not assignable, the City will approve a new 10-year License Agreement with Fairmount Investments LLC to use City right-of-way on both Alamo and Nueva streets, as reflected on attached Exhibit "A" for a consideration of \$5,000.00.

## **POLICY ANALYSIS**

This action is consistent with the City's policy to execute new documents such as an Assignment of Lease, Consent to a Sublease and a new License Agreement when changes in ownership occur.

### **FISCAL IMPACT**

This ordinance does not impact the rent terms the City receives from the ground lease. However, the City will receive a License Fee of \$5,000.00 from Fairmount Investment LLC for the new License Agreement.

### **COORDINATION**

This item has been coordinated with the City Attorney's Office and Finance Department.

### **SUPPLEMENTARY COMMENTS**

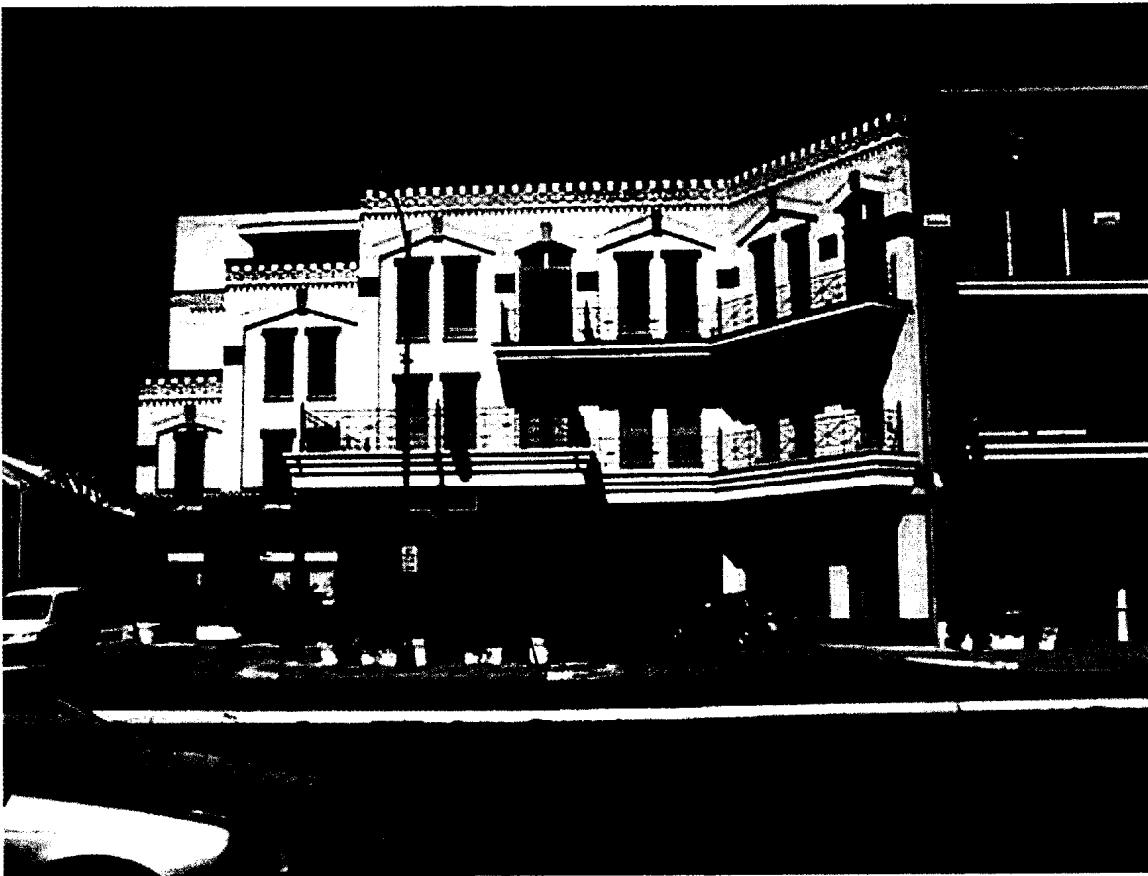
The required Discretionary Contracts Disclosure Form and a letter of agreement between the parties for the use of city right-of-way are attached.



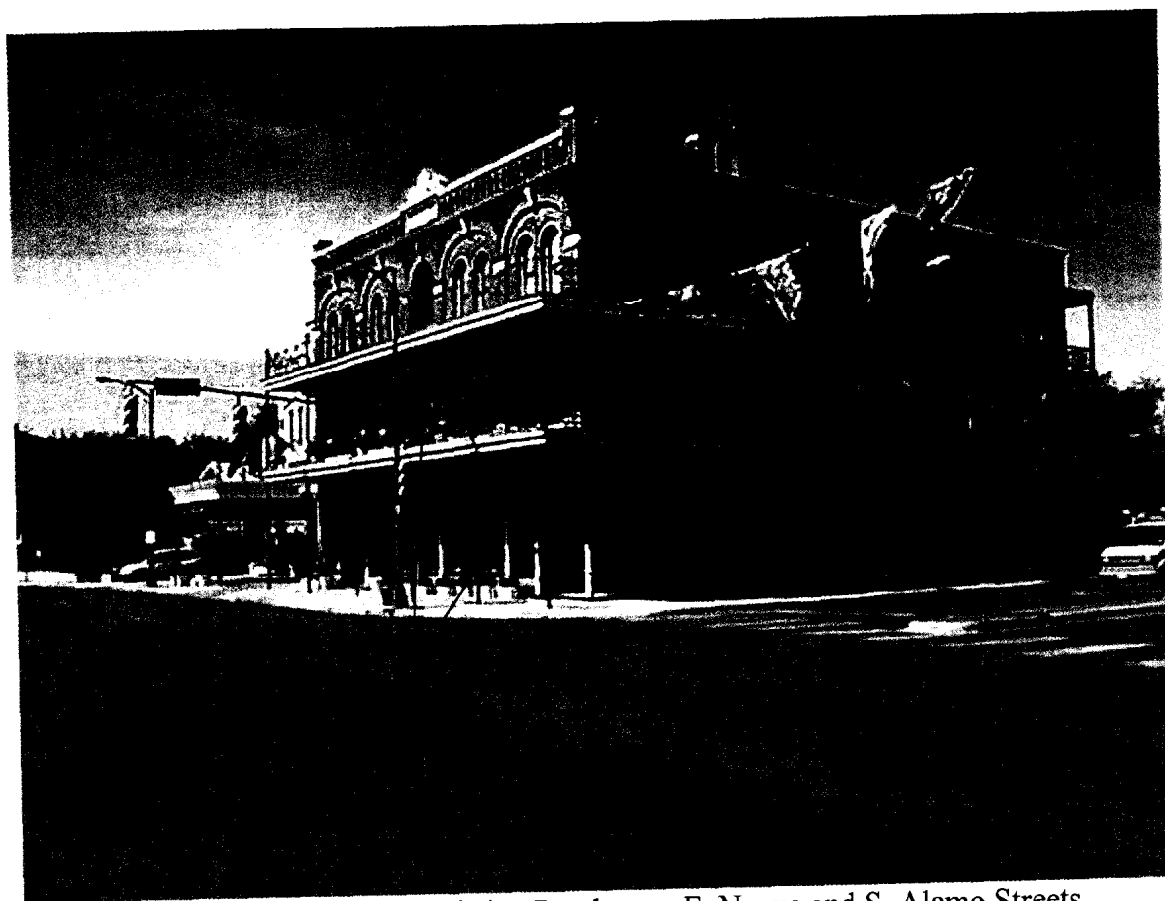
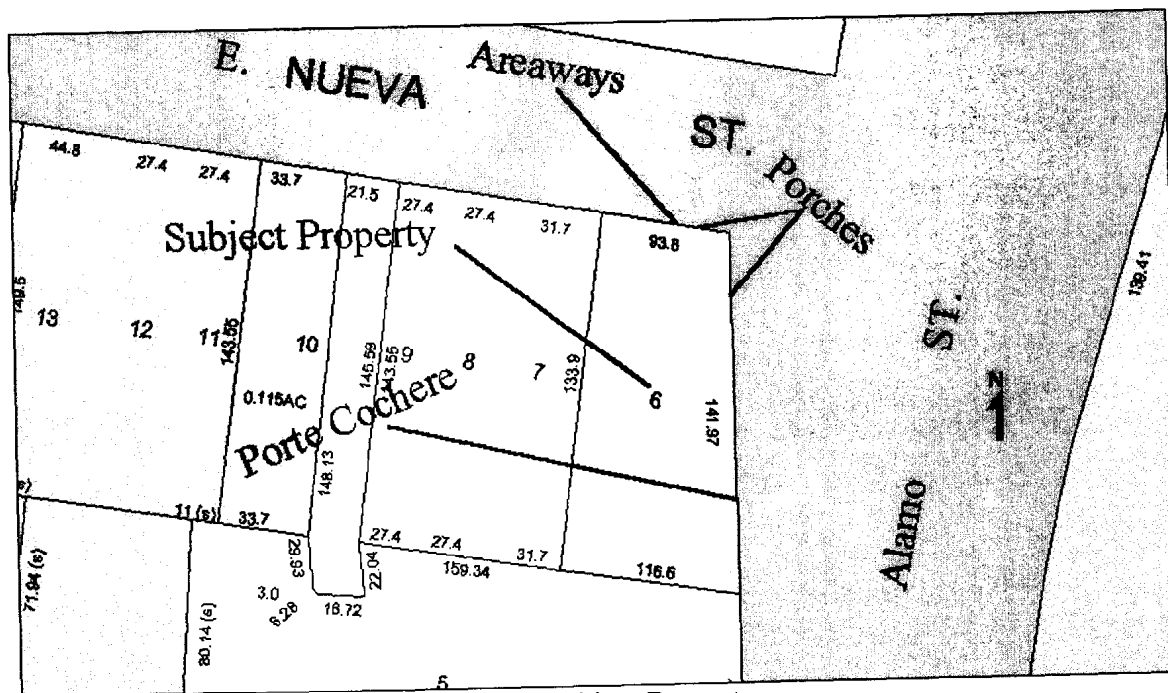
Rebecca Waldman, Director  
Department of Asset Management



Erik J. Walsh  
Assistant to the City Manager



Westerly View of Existing Porte Cochere on S. Alamo Street



**Exhibit “A”**  
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# CITY OF SAN ANTONIO

DEPARTMENT OF ASSET MANAGEMENT  
P.O. BOX 839966 SAN ANTONIO, TEXAS 78283-3966  
TEL. 210-207-4032 FAX 210-207-7888

March 12, 2004

FAIRMOUNT INVESTMENTS, LLC  
a Texas limited liability company  
C/o: Kaufman & Associates Inc.  
Attn: Rob Killen  
105 W. Houston St., Suite 1250  
San Antonio, Texas 78205

Re: S. P. No.593 — Request for a license to use Public Right of Way for two (2) existing porches and four (4) existing areaways at the Southwest corner of Alamo and Nueva Streets and an existing porte cochere at the Fairmount Hotel at 401 South Alamo Street, in New City Block 155

Dear Mr. Killen:

With reference to the captioned project, please be advised that the City of San Antonio will recommend approval of your client's request subject to the following conditions:

Petitioner agrees to pay the total license fee of \$5,000.00 for a 10-year term. This license fee will be due and payable to the City of San Antonio prior to City Council consideration. If for some reason the license is not approved by City Council, the license fee will be returned to the petitioner. Also, a Certificate of Insurance must be provided and the City of San Antonio must be formally released from any and all liabilities, which may be incurred in connection with this request.

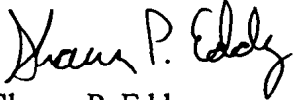
If you concur with the above-mentioned conditions, including the payment of the fee established for these encroachments, please countersign this letter in the space provided below and return to the undersigned. Upon receipt of this signed Letter of Agreement, the Certificate of Insurance and the completed Discretionary Contracts Disclosure Statement we will continue processing your request.

FAIRMOUNT INVESTMENTS, LLC  
a Texas limited liability company  
C/o: Kaufman & Associates Inc.  
Attn: Rob Killen  
Page 2 / S.P. 593  
March 12, 2004

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This Letter of Agreement is being offered by the City of San Antonio only to the above named petitioner and will expire thirty (30) days after the date of issuance unless a specific extension is requested by the petitioner and granted by the City.

Sincerely,



Shawn P. Eddy  
Special Projects Manager

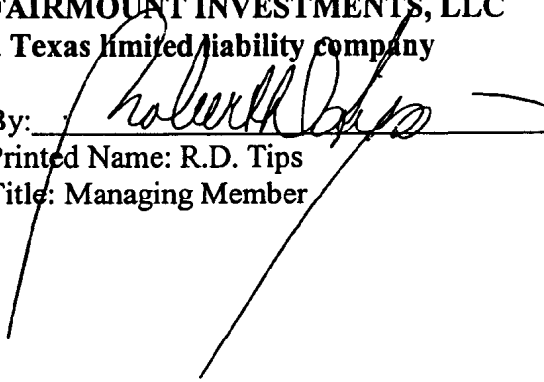
AGREED AS TO TERMS AND CONDITIONS:

**FAIRMOUNT INVESTMENTS, LLC**  
**a Texas limited liability company**

By: \_\_\_\_\_

Printed Name: R.D. Tips

Title: Managing Member



# City of San Antonio

## Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

N/A

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

Fairmount Investments, LLC

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

N/A

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

R.D. Tips, Inc. (Parent)

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

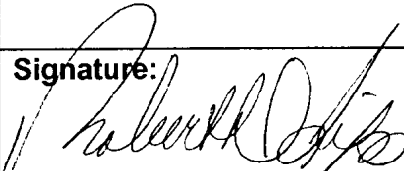
### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

<b>Signature:</b>  Robert D. Tips	<b>Title:</b> Managing Member  <b>Company:</b> Fairmount INvestments, LLC	<b>Date:</b>  3/15/04

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.