

**CITY OF SAN ANTONIO
INTERNATIONAL AFFAIRS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA

ITEM NO.

42

TO: Mayor and City Council

FROM: Elizabeth E. Costello, Director, International Affairs and Ramiro A. Cavazos,
Director, Economic Development

SUBJECT: Free Trade Alliance San Antonio FY 2005-2006 Contract

DATE: November 3, 2005

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing a professional services contract with the Free Trade Alliance San Antonio in an amount not to exceed \$150,000 for the period October 1, 2005 through September 30, 2006. Staff recommends the approval of this ordinance.

BACKGROUND INFORMATION

The City of San Antonio was a founding partner in the creation of the Free Trade Alliance in 1994 following the passage of the North American Free Trade Agreement (NAFTA), to maximize NAFTA opportunities for San Antonio as an inland port. Since its inception, the City Council approved support of the organization with yearly budgetary funding of \$150,000. The other partners that joined in its support were the Greater San Antonio Chamber of Commerce, the San Antonio Hispanic Chamber of Commerce and the San Antonio Economic Development Foundation. Since then, three additional institutional partners have been added, and these include the San Antonio Water System, KellyUSA and Bexar County.

The Free Trade Alliance has its roots in the San Antonio World Trade Association, providing educational and networking opportunities for San Antonio companies. In addition to these functions, the Free Trade Alliance was created as an organization that constitutes a broad community network for the purpose of promoting San Antonio as the center of international trade resulting from NAFTA.

POLICY ANALYSIS

This ordinance supports the City of San Antonio's commitment to promote Inland Port San Antonio as the center of trade for the Americas, to monitor policies relating to NAFTA trade and to increase international business activity. The Free Trade Alliance San Antonio will continue to lead in the development of Inland Port San Antonio to enhance the logistics, distribution and trade promotion capabilities. The Free Trade Alliance San Antonio will continue to develop an integrated marketing program to promote San Antonio as an International Trade Center, and will continue to coordinate advocacy efforts that impact San Antonio's development as an international center. These efforts include the cross-border trucking provision of NAFTA, immigration reform, the permanent port of entry, the US Visit program and other free trade agreements.

The Free Trade Alliance will continue to assist the International Affairs Department in the promotion of its international business programs which include the Casa San Antonio program, Trade Mission program, business match-making services, San Antonio Export Leaders program and the San Antonio Directory of Exporters and Support Organizations.

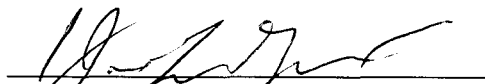
Furthermore, the Free Trade Alliance will be actively assisting the Economic Development Department in administering Foreign Trade Zone #80. Specifically, FTA will support staff by: (1) providing a comprehensive marketing and training program; (2) preparing the annual report to the Foreign Trade Zone Board; (3) assisting business clients in preparing applications for site activation, subzone designation or boundary changes; (4) maintaining appropriate FTZ records and files; (5) collecting fees payable to the City; and (6) establishing and reporting semi-annually and annually on performance measures that include marketing efforts, prospects contacted, training workshops, jobs created, and FTZ revenues. Through this partnership with the FTA, the City will utilize the expertise and resources of the FTA to more effectively promote economic development in the FTZ.


FISCAL IMPACT


This item is consistent with the FY 2005/2006 adopted general fund budget.

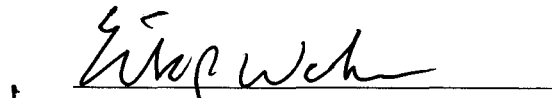
COORDINATION

This ordinance has been coordinated with the City Attorney's Office and the Economic Development Department.


Elizabeth E. Costello, Director
International Affairs


Ramiro A. Cavazos, Director
Economic Development


Frances A. Gonzalez
Assistant City Manager


J. Rolando Bono
City Manager

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

PROFESSIONAL SERVICES CONTRACT BETWEEN THE CITY OF SAN ANTONIO AND THE FREE TRADE ALLIANCE SAN ANTONIO

This Contract is 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 City Manager or designee pursuant to Ordinance No. _____ dated _____, 2005, and the Free Trade Alliance San Antonio (hereinafter "FREE TRADE ALLIANCE"); collectively, the "Parties".

WHEREAS, CITY has provided certain funds from its General Operating Budget; and

WHEREAS, FREE TRADE ALLIANCE is a Texas, non-profit corporation comprised of individuals and community organizations headed by the City of San Antonio, the Greater San Antonio Chamber of Commerce, the San Antonio Hispanic Chamber of Commerce, the San Antonio Economic Development Foundation (EDF), San Antonio Water System, KellyUSA, and Bexar County; and

WHEREAS, this organization constitutes a broad community network for the purpose of promoting San Antonio as the center of international trade; and

WHEREAS, it is in the best interest of the CITY to continue its contribution to this organization for the purpose of increasing international business activity; and

WHEREAS, CITY wishes to engage FREE TRADE ALLIANCE to carry out such PROGRAM; and

WHEREAS, CITY designates its International Affairs Department (hereinafter referred to as "responsible department") as the City Department, acting for its City Manager, responsible for the evaluation and fiscal monitoring of the PROGRAM; 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. PURPOSE STATEMENT

1.1 The purpose of this Contract is for FREE TRADE ALLIANCE to develop San Antonio as the center for trade in the Americas and to maximize international

business opportunities for San Antonio through the North American Free Trade Agreement (hereinafter referred to as "NAFTA").

II. TERM

2.1 Except as otherwise provided pursuant to the provisions hereof, this Contract shall begin on October 1, 2005 and shall terminate on September 30, 2006.

III. PERFORMANCE

3.1 FREE TRADE ALLIANCE, in accordance and in compliance with the terms, provisions and requirements of this Contract, agrees to perform and provide all services as set forth in Article IV of this Contract. FREE TRADE ALLIANCE shall produce all documentation in the form of performance records and reports as required under the terms of this Contract.

3.2 Modifications or alterations to Article IV may only be made pursuant to the prior written approval of CITY. FREE TRADE ALLIANCE shall notify CITY in writing of any event which could delay substantially the achievement of the Scope of Work as defined in Article IV.

IV. SCOPE OF WORK

4.1 FREE TRADE ALLIANCE shall develop and continuously update a strategic plan for San Antonio's international economic development which includes the principal functions of developing San Antonio as an international trade center and inland port and which incorporates the City of San Antonio's *Strategic Plan for Enhanced Economic Development* and its targeted driver industries. FREE TRADE ALLIANCE shall submit to the CITY International Affairs Department in December, the draft Strategic Objectives, Goals and Activities Plan for review and comment.

4.2 FREE TRADE ALLIANCE shall serve as the primary organization responsible for targeting key industries needed to complement and improve current international logistics and distribution infrastructure, working in conjunction with the CITY, Economic Development Foundation and the Greater Kelly Development Authority. FREE TRADE ALLIANCE shall examine logistics policy issues which impact San Antonio's development as an inland port (i.e., customs enhancement, bonded freight shipments, public logistics infrastructure development) and other policy issues upon request, and coordinate with CITY staff to identify a united position.

4.3 FREE TRADE ALLIANCE shall work with the CITY and the other institutional member organizations to develop an integrated marketing program which incorporates all local resources and assets as well as coordinate with

existing economic development efforts. FREE TRADE ALLIANCE shall help determine the message to be conveyed in materials and provide talking points and audio-visual materials for group presentations. Promotional materials shall also incorporate the utilization of Foreign Trade Zone #80 as a potential location for tax and customs-protected warehousing/distribution, international manufacturing, assembly and display. FREE TRADE ALLIANCE shall also assist the CITY in the promotion of its international business programs which include: the Casa San Antonio Program, Trade Mission Programs, Match-Making, San Antonio Export Leaders Program and San Antonio Directory of Exporters and Support Organizations. It shall promote the International Affairs Department (whose main focus is to expand San Antonio companies into international markets): (1) to FREE TRADE ALLIANCE members; and (2) to other local businesses through referrals; and (3) in presentation and marketing materials. FREE TRADE ALLIANCE shall continue to work with the Casa San Antonio Program in hosting delegations in support of two-way trade.

4.4 FREE TRADE ALLIANCE shall provide international educational and networking opportunities for San Antonio companies, including the monthly Mexico Group meeting and the monthly newsletter. From its roots as the San Antonio World Trade Association, the Alliance shall continue to sponsor educational opportunities for its members and the community at large to enhance international expertise and facilitate networking. FREE TRADE ALLIANCE shall also serve as a clearinghouse and coordination point for assistance to San Antonio businesses looking to exploit trade opportunities. In addition, the Alliance shall also assist the CITY'S International Affairs Department with its matchmaking efforts and hosting of international business visitors when appropriate. FREE TRADE ALLIANCE shall also coordinate Trade Missions to cities which complement the Casa San Antonio Program in conjunction with the Hispanic Chamber, and to cities and/or countries where San Antonio does not have offices, representation or Sister City relationships.

4.5 FREE TRADE ALLIANCE shall support the Economic Development Department with the administration and marketing of the Foreign Trade Zone #80. The administration shall include the: (a) preparation of the annual report for submission by the Economic Development Department to the Foreign Trade Zone Board by January 31, 2006; (b) preparation of any applications for site activation, subzone designation, or change in boundaries; (c) scheduling of site visits and reports; (d) collection and timely remittance of fees payable to the City of San Antonio through the Economic Development Department by June 6th; and (e) complete and timely maintenance of associated records and files. All reports and applications shall be submitted to the City of San Antonio Economic Development Department for final review and approval before submission. FREE TRADE ALLIANCE shall maintain a website to provide information on Foreign Trade Zone #80 and provide educational and promotional workshops on the benefits of foreign trade zones for marketing purposes. In advance, the Economic Development Department shall have the right to review and approve

all promotional materials and/or advertisements. The City of San Antonio Economic Development Department shall be referenced clearly in every ad, promotion or website. FREE TRADE ALLIANCE shall participate in meetings with potential users and operators of Foreign Trade Zone #80 in conjunction with the Economic Development Department of the CITY. FREE TRADE ALLIANCE shall also develop, maintain and report performance measures to the CITY on a semi-annual basis that will include, but are not limited to, the following areas: marketing initiatives, advertisements, inquiries and responses, prospects contacted, seminars/educational workshops, jobs created, new businesses and expansions, Foreign Trade Zone users and revenues. FREE TRADE ALLIANCE shall also submit an annual report to the CITY compiling the semi-annual results and providing the CITY any recommendations regarding administration, marketing, and budgeting. Reports shall be submitted to the CITY within 30 days of the end of each semi-annual and annual reporting period for March and September, respectively.

V. PERFORMANCE RECORDS AND REPORTS

5.1 FREE TRADE ALLIANCE shall report an annual rate of return based on the business generated through current or former IBDC (International Business Development Center) participants. The rate of return would be based on the amount of trade generated (as reported from the annual survey) divided by the budget of the IBDC program (including salaries). FREE TRADE ALLIANCE shall maintain accurate, current and complete accounting records and supporting documentation for all expenditures of funds made under this Contract. FREE TRADE ALLIANCE shall retain such records, and any supporting documentation, for the greater of five (5) years from the end of the contract period, or the period required by other applicable laws and regulations.

5.2 FREE TRADE ALLIANCE shall provide, to the responsible department of City, a copy of its annual audit report when presented to its Board of Directors. FREE TRADE ALLIANCE shall give CITY and or any of CITY's duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by FREE TRADE ALLIANCE pertaining to this Contract. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to terminate the Contract. In the event of a City examination, FREE TRADE ALLIANCE shall reimburse the City for any expenditure that are not directly related to this contract and/or not supported by the proper documentation. FREE TRADE ALLIANCE will pay the cost of this examination if the variance of expenditures exceed 3% of the funds disbursed by the City.

5.3 As often and in such form as CITY may require, FREE TRADE ALLIANCE shall furnish CITY such performance records and reports deemed by CITY as pertinent to matters covered by this Contract.

5.4 At minimum, quarterly performance records and reports as presented to the Executive Committee meetings shall be submitted to the International Affairs Department of CITY by FREE TRADE ALLIANCE.

VI. PERSONNEL

6.1 Both CITY and FREE TRADE ALLIANCE shall work together to accomplish their applicable tasks as outlined in the Scope of Work described in Section IV. Persons performing work pursuant to this Contract shall be the employees of CITY or FREE TRADE ALLIANCE. Any work subcontracted to third parties pursuant to this Contract must be pre-approved by CITY.

VII. COORDINATION WITH CITY

7.1 The Director of International Affairs (hereinafter the "Director"), or designated representative, shall have complete authority to transmit instructions, receive information, interpret the CITY's policies and decisions with respect to materials, elements and work pertinent to the CITY's services. Any contact with CITY officials shall be coordinated with the Director of International Affairs.

VIII. FEES, EXPENSES AND BILLING

8.1 In consideration of FREE TRADE ALLIANCE'S performance in a satisfactory and efficient manner, as determined solely by CITY, of all services and activities set forth in Article IV of this CONTRACT, CITY agrees to pay the FREE TRADE ALLIANCE an amount not to exceed one hundred and fifty thousand dollars (\$150,000), subject to appropriation.

8.2 CITY shall make payments to the FREE TRADE ALLIANCE in four (4) quarterly payments of thirty seven thousand five hundred dollars (\$37,500), upon receipt and review of the quarterly Goals & Accomplishments report. CITY shall not be obligated or liable under this Contract to any other party, other than FREE TRADE ALLIANCE, for payment of any monies or provisions of any goods or services.

8.3 No additional expenses to the FREE TRADE ALLIANCE or its subconsultants shall be charged by FREE TRADE ALLIANCE.

IX. LEGAL/LITIGATION EXPENSES

9.1 Under no circumstances shall the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY. FREE TRADE ALLIANCE must obtain the written approval of the City Attorney's Office before any funds received under this

Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

9.2 During the term of this Contract, if FREE TRADE ALLIANCE files and/or pursues an adversarial proceeding against CITY then, at CITY's option, this Contract and all access to the funding provided for hereunder may terminate if it is found that FREE TRADE ALLIANCE has violated this Article.

9.3 FREE TRADE ALLIANCE, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remain unresolved.

9.4 For purposes of this Article, "adversarial proceedings" include any cause of action filed by FREE TRADE ALLIANCE in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

X. TERMINATION

10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term, or earlier termination pursuant to any of the provisions hereof.

10.2 This Agreement may be terminated, in whole or in part, by CITY for:

A. neglect or failure by FREE TRADE ALLIANCE to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment made hereto between CITY and FREE TRADE ALLIANCE; or

B. Violation by FREE TRADE ALLIANCE of any rule, regulation or law to which FREE TRADE ALLIANCE is bound or shall be bound under the terms of this Contract.

10.3 CITY shall send notice of default to FREE TRADE ALLIANCE subject to the provisions in Article XVIII (NOTICE). The FREE TRADE ALLIANCE shall have sixty (60) days from the notice of default to cure such default, and no funds will be distributed during the notice of the default period.

10.4 If at the end of the sixty (60) day opportunity to cure, such default has not been cured, CITY shall issue a signed, written notice of termination (citing this paragraph) to FREE TRADE ALLIANCE specifying the effective date of termination and the applicable provisions to be terminated.

10.5 The FREE TRADE ALLIANCE shall return all such files, documentation, materials, reports, advertising materials or other work product applicable to this Contract, as well as any unearned fees, as requested by CITY.

XI. INDEPENDENT CONTRACTORS

11.1 It is expressly understood and agreed to by the Parties to this Contract that CITY is contracting with FREE TRADE ALLIANCE as an independent Contractor. The Parties understand and agree that CITY shall not be liable for any claims which may be asserted by any third party against FREE TRADE ALLIANCE occurring in connection with services performed under this Contract.

11.2 The Parties further understand and agree that neither Party has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XII. CONFLICT OF INTEREST

12.1 Contractor 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 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: 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.

12.2 Pursuant to the subsection above, Contractor warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIII. INSURANCE REQUIREMENTS

13.1 Nothing herein contained shall be construed as limiting in any way the extent to which FREE TRADE ALLIANCE may be held responsible for payments of damages to persons or property resulting from FREE TRADE ALLIANCE's or its subcontractors' performance of the work covered under this Contract.

13.2 Prior to the commencement of any work under this Contract, FREE TRADE ALLIANCE shall furnish a completed Certificate of Insurance to CITY's International Affairs Department Director and City Clerk's Office at the addresses listed in Section 13.8 of this Contract. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to the City's International Affairs Department Director and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

13.3 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.

13.4 FREE TRADE ALLIANCE's financial integrity is of interest to CITY, therefore, subject to FREE TRADE ALLIANCE's right to maintain reasonable deductibles in such amounts as are approved by CITY, FREE TRADE ALLIANCE shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at FREE TRADE ALLIANCE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Commercial General (public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate or its equivalent in Umbrella or Excess Liability coverage
a. Premises operation	
b. Independent Contractors	
c. Products/completed operations	
d. Contractual liability	
4. Business Automobile Liability:	Combined Single Limit for Bodily injury and Property Damage: \$1,000,000 per occurrence
(a) Owned/Leased	
(b) Non-Owned	
(c) Hired Automobiles	
5. Professional Liability	\$500,000 per claim

13.5 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, FREE TRADE ALLIANCE shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

13.6 FREE TRADE ALLIANCE agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured performed under Contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;

- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

13.7 FREE TRADE ALLIANCE shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
International Affairs Director
203 South St. Mary's Street
Suite 360 (3rd Floor)
San Antonio, Texas 78205**

**City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966**

13.8 If FREE TRADE ALLIANCE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of FREE TRADE ALLIANCE to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon FREE TRADE ALLIANCE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order FREE TRADE ALLIANCE to stop work hereunder, and/or withhold any payment(s) which become due, to FREE TRADE ALLIANCE hereunder until FREE TRADE ALLIANCE demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which FREE TRADE ALLIANCE may be held responsible for payments of damages to persons or property resulting from FREE TRADE ALLIANCE's or its subconsultants' performance of the work covered under this Contract.

XIV. INDEMNITY

14.1 FREE TRADE ALLIANCE COVENANTS AND AGREES TO FULLY INDEMNIFY 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 BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE

CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF FREE TRADE ALLIANCE, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF FREE TRADE ALLIANCE, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. FREE TRADE ALLIANCE SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR FREE TRADE ALLIANCE KNOWN TO FREE TRADE ALLIANCE RELATED TO OR ARISING OUT OF FREE TRADE ALLIANCE'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT FREE TRADE ALLIANCE'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING FREE TRADE ALLIANCE OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

14.2 IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS ARTICLE, IS AN INDEMNITY EXTENDED BY FREE TRADE ALLIANCE TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF THE CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF THE CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH OR DAMAGE. FREE TRADE ALLIANCE FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE, AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN

CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

XV. SEVERABILITY

15.1 If any clause or provision of this Contract 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 Contract 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 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.

XVI. CHANGES AND AMENDMENTS

16.1 Except when the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and FREE TRADE ALLIANCE and approved by City Council, as evidenced by a duly-authorized ordinance.

XVII. ASSIGNMENT

17.1 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor attempt to assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract without City's written approval, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor or any termination hereof by City shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City which City sustains as a result of such violation.

XVIII. ENTIRE AGREEMENT

18.1 This Contract constitutes the final and entire Agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind the parties hereto unless the same be in writing, dated subsequent to the date hereof, and executed by said parties.

XIX. NOTICES

19.1 Except when the terms of this Contract expressly provide otherwise, all notices reports, and deliverables to be given or made by FREE TRADE ALLIANCE to CITY pursuant to this Contract shall be given or made to:

Director of International Affairs
203 South St. Mary's Street
Suite 360 (3rd Floor)
San Antonio, Texas 78205

or such place as may be designated by CITY from time to time in writing.

All notices reports, and documents required to be given or made by the CITY to FREE TRADE ALLIANCE pursuant to this Contract shall be given to FREE TRADE ALLIANCE at its address set forth below:

Free Trade Alliance San Antonio
203 South St. Mary's Street
Suite 130 (1st Floor)
San Antonio, Texas 78205

XX. NO PERSONAL LIABILITY

20.1 No elected official, director, officer, agent, or employee of CITY shall be charged personally or held Contractually liable by or to FREE TRADE ALLIANCE under any term or provision of this Contract, or because of any breach thereof, or because of its or their execution, of approval, or attempted execution of this Agreement.

XXI. GOVERNING LAW

21.1 This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas. In any action, arising out of, in connection with or by reason of the Contract, the laws of the State of Texas shall be applicable and without regard to the jurisdiction in which the action or special proceeding may be instituted.

XXII. LEGAL AUTHORITY

22.1 The signer of this Contract for FREE TRADE ALLIANCE represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of FREE TRADE ALLIANCE and to bind the FREE TRADE

ALLIANCE to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

23.1 This Contract shall be binding on and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXIV. SIGNATURES

24.1 FREE TRADE ALLIANCE and CITY for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained. This contract has been executed in duplicate originals this _____ day of _____, 2005.

AGREED TO BE EFFECTIVE October 1, 2005.

CITY OF SAN ANTONIO

City Manager

ATTEST:

City Clerk

FREE TRADE ALLIANCE
SAN ANTONIO

By: 

Name: BLAKE HASTINGS

Title: Executive Director

APPROVED AS TO FORM:

City Attorney