

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

**CONSENT AGENDA
ITEM NO. 39**

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 2004-2005 Contract

DATE: December 9, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes a professional services contract between the City of San Antonio and the Free Trade Alliance San Antonio in the amount of \$150,000 for the Fiscal Year 2004-2005. 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, two additional institutional partners have been added, and these include the San Antonio Water System and KellyUSA.

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, the implementation of the international trade data system (ITDS), 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) developing and implementing 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

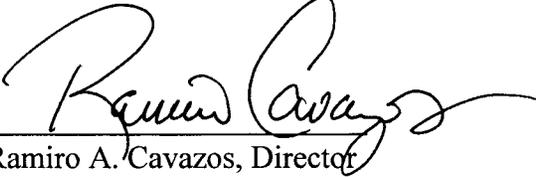
This item is consistent with the FY 2004/2005 adopted general fund budget.

COORDINATION

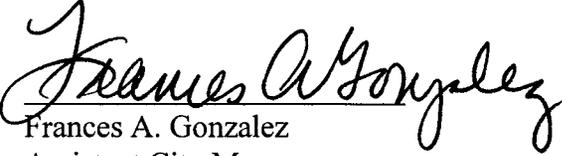
This ordinance has been coordinated with the City Attorney's Office and the Economic Development Department.



Elizabeth E. Costello, Director
International Affairs



Ramiro A. Cavazos, Director
Economic Development



Frances A. Gonzalez
Assistant City Manager



J. Rolando Bono
Interim 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 his designee pursuant to Ordinance No. _____ dated _____, 2004, 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, and KellyUSA; 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, 2004 and shall terminate on September 30, 2005. On or before June 1, 2005, the Free Trade Alliance shall provide, to the responsible department of City, a copy of its annual audit report previously presented to its Board of Directors.

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 Section IV of this Contract. Upon request by CITY, FREE TRADE ALLIANCE shall produce documentation for all work performed as required under this Contract.

3.2 Modifications or alterations to Section 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 Section 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.

4.2 FREE TRADE ALLIANCE shall continue to incorporate in their strategic plan the priority cluster action challenges that resulted from the Transportation and Logistics Cluster Collaborative Strategy Worksession held February 27, 2001. These include 1) Lobby for the cross-border trucking provision of NAFTA; and 2) Establish a One-Stop Center for warehousing and trucking – Trade Processing Center (must be regional and collaborative).

4.3 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 coordinate with CITY staff to identify a united position.

4.4 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 small- to medium-sized 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.

4.5 FREE TRADE ALLIANCE shall provide international educational and networking opportunities for San Antonio companies. 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. In conjunction with the Hispanic Chamber, FREE TRADE ALLIANCE shall also coordinate Trade Missions to cities which complement the Casa San Antonio Program, particularly to those cities and/or countries where San Antonio does not have offices, representation or Sister City relationships.

4.6 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; (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; 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 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, FTZ 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.

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 participants. The rate of return would be based on the budget of the IBDC, including staff time and trade generated collected from an annual survey. FREE TRADE ALLIANCE shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Contract in a manner that conforms to 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 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.

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 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 her 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 CONSULTANT an amount not to exceed one hundred and fifty thousand dollars (\$150,000.00).

8.2 CITY shall make payments to the FREE TRADE ALLIANCE in four (4) quarterly payments of thirty seven thousand five hundred dollars (\$37,500.00). 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 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 remains 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 extended term, if applicable, 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.

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 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 FREE TRADE ALLIANCE acknowledges that it is informed that the City's Charter and its Ethics Code, as amended, prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to 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 No member of CITY's governing body or of its staff who exercises any function or responsibility in the review of or approval of the undertaking of this Contract shall:

- A. participate in any decision relating to this Contract which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- B. have any direct or indirect personal interest in this Contract or the proceeds thereof.

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 Within ten (10) working days following execution of this Contract, FREE TRADE ALLIANCE shall obtain a fidelity bond covering all persons handling funds received or disbursed hereunder and/or signing or co-signing checks for said fund disbursement. FREE TRADE ALLIANCE's fidelity bond shall be in an amount of one hundred and fifty thousand dollars (\$150,000.00), and evidence of same shall be filed with CITY prior to any disbursement of funds hereunder but no later than ten (10) working days following execution of this Contract. FREE TRADE ALLIANCE shall ensure that such bond shall contain a provision that cancellation or expiration notice be sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration.

13.3 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.

13.4 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.

13.5 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 \$1,000,000.00 per occurrence; \$2,000,000.00 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

13.6 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.

13.7 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.

13.8 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 Dept. 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**

13.9 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 only 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 Contract and performance hereunder shall be construed in accordance with the laws of the State of 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 instituted.

XXII. VENUE

22.1 If legal action is necessary in connection herewith, exclusive venue shall lie in Bexar County, Texas.

XXIII. LEGAL AUTHORITY

23.1 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.

XXIV. PARTIES BOUND

24.1 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.

XXV. SIGNATURES

25.1 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 _____, 2004.

AGREED TO BE EFFECTIVE October 1, 2004.

CITY OF SAN ANTONIO

**FREE TRADE ALLIANCE
SAN ANTONIO**

J. Rolando Bono
Interim City Manager

By: _____
Name: _____
Title: _____

ATTEST:

APPROVED AS TO FORM:

City Clerk
Leticia Vacek

City Attorney