

AN ORDINANCE 2006-03-23-0372

AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH THE SAN ANTONIO MOBILITY COALITION, INC., FOR THE IMPLEMENTATION AND COORDINATION OF TRANSPORTATION AND MOBILITY SOLUTIONS BEGINNING APRIL 1, 2006 THROUGH JANUARY 31, 2007.

* * * * *

WHEREAS, San Antonio Mobility Coalition, Inc. (SAMCo), a nonprofit group formed in 2002, is instrumental in identifying, publicizing, and advancing the implementation of mobility solutions for San Antonio and Bexar County that will maintain and improve quality of life, economic growth, and business conditions in the area; and

WHEREAS, the City of San Antonio has been a member of SAMCo since its inception and works closely with its other members; and

WHEREAS, the City, simultaneously with its membership executed a Professional Services Agreement with SAMCo; and

WHEREAS, the City of San Antonio's Fiscal Year 2006-07 payment was appropriated and approved for payment to SAMCo by Ordinance No. 2006-01-05-23 passed January 5, 2006; and

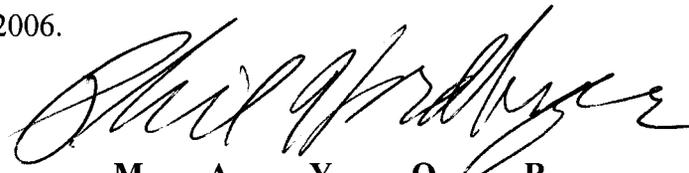
WHEREAS, approval of this Ordinance is a continuation of City Council policy to cooperate in identifying and supporting the implementation of transportation mobility solutions for the San Antonio metropolitan area, **NOW THEREFORE:**

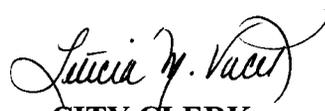
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute a Professional Services Agreement with San Antonio Mobility Coalition, Inc. (SAMCo), a copy of which is attached hereto and incorporated herein for all purposes as Attachment I, setting out the parameters through which SAMCo will help identify, coordinate, and advance implementation of transportation mobility solutions for the San Antonio Metropolitan area.

SECTION 2. This Ordinance shall be effective on April 2, 2006.

PASSED AND APPROVED this the 23rd day of March, 2006.


M A Y O R
PHIL HARDBERGER

ATTEST: 
CITY CLERK

APPROVED AS TO FORM: 
City Attorney

STATE OF TEXAS) (PROFESSIONAL SERVICES CONTRACT -SAMCo

COUNTY OF BEXAR) (

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 pursuant to Ordinance No. _____ dated _____ 2006, and the San Antonio Mobility Coalition, a Texas non-profit Corporation (hereinafter "SAMCo"), acting by and through its Executive Director.

WITNESSTH

WHEREAS, SAMCo is a nonprofit organization formed in December 2002 representing both private and public interests to help focus local transportation planning efforts and seek funding for projects that will maintain and improve the quality of life, economic growth and business conditions within the City and surrounding areas; and

WHEREAS, it is in the best interest of the CITY to participate with SAMCo and assist in promoting the purposes of this organization;

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 to set out the parameters by which SAMCo shall provide certain services to the CITY to help identify coordinate and advance implementation of transportation and mobility solutions for the CITY and the San Antonio Metropolitan Area.

II. TERM

2.1 Except as otherwise provided pursuant to the provisions hereof, this Contract shall begin on February 1, 2006 and shall terminate on January 31, 2007. The parties further agree that at the conclusion of twelve (12) months the Board of Directors and Executive Committee of SAMCo will conduct a performance review of SAMCo's accomplishments of the terms, provisions and requirements set out herein.

III. SCOPE OF WORK

3.1 SAMCo, in accordance and compliance with the terms, provisions and requirements of this CONTRACT; shall manage, perform and provide all activities and services and produce all reports set out in the Scope of Work attached hereto and incorporated herein for all purposes as Exhibit "A".

Attachment I
To Ordinance No. _____
Passed and approved 02/23/06

3.2 Modification or alterations to Exhibit "A" may be made only pursuant to prior notification and written approval of CITY.

IV. RECORD AND REPORTS

4.1 SAMCo shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Contract in a manner that conforms to this Contract. SAMCo 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.

4.2 SAMCo shall give CITY and or any of CITY's duly authorized representative, 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 SAMCo pertaining to this Contract. Failure to provide reasonable access to authorized CITY representatives shall give the CITY the right to terminate the Contract.

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

V. PERSONNEL

5.1 SAMCo agrees to and shall provide any and all staffing to accomplish the Scope of Work attached hereto.

VI. COORDINATION WITH CITY

6.1 The Director of Public Works (hereinafter the "Director"), or his 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 this Contract. Any contract with CITY officials shall be coordinated with the Director.

VII. FEES, EXPENSES AND BILLING

7.1 In consideration of SAMCo'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 **Forty-Nine Thousand dollars (\$49,000.00)** as membership dues, as authorized by Ordinance Number 2006-01-05-23 of January 5, 2006.

7.2 CITY shall make payments to SAMCo in one lump sum payable by April 1, 2006. CITY shall not be obligated or liable under this Contract to any other party, other than SAMCo, for payment of any monies or provisions of any goods or services.

7.3 No additional dues, fees or expenses shall be charged to CITY by SAMCo.

VIII. LEGAL/LITIGATION EXPENSES

8.1 Under no circumstances will 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. SAMCo 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.

8.2 During the term of this Contract, if SAMCo 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 SAMCo has violated this Article.

8.3 SAMCo, at CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.

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

IX. TERMINATION

9.1 This Contract may be terminated by CITY for substantial failure by SAMCo to perform in accordance with the terms of hereof. CITY must issue a signed, written notice of termination (citing this paragraph) to SAMCo, which shall take effect on the tenth day following receipt of said notice.

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

9.3 In addition to any other provision of this Contract, CITY may terminate this Contract for any of the following:

A. Neglect or failure by SAMCO to perform or observe any of the terms, conditions, covenants or guarantees of this Contract or of any amendment hereto between CITY and SAMCO; or

B. Violation by SAMCO of any rule, regulation or law to which SAMCO is bound or shall be bound under the term of this Contract.

9.4 CITY may terminate this Contract, in whole or in part, whenever it determines, within its sole discretion, termination is in the best interest of CITY.

9.5 Upon a decision to terminate by CITY, written notice of such shall be immediately provided to SAMCO specifying the effective date of termination and the extent to which performance of work under this Contract will be terminated.

X. INDEPENDENT CONTRACTORS

10.1 It is expressly understood and agreed to by both parties to this Contract that CITY is contracting with SAMCO as an independent Contractor. The parties understand and agree that CITY shall not be liable for any claims, which may be asserted by and third party against SAMCO occurring in connection with services performed under this Contract.

10.2 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.

XI. INSURANCE REQUIREMENTS

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

11.2 Within ten (10) working days following execution of this Contract, SAMCO shall obtain a fidelity bond covering all persons handling funds received or disbursed hereunder and/or signing or consigning checks for said fund disbursement. SAMCO's fidelity bond shall be in an amount of one hundred thousand dollars (\$100,000.00), and evidence or 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. SAMCO shall ensure that such bond shall contain a provision that cancellation or expiration notice is sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration.

11.3 Prior to the commencement of any work under this Contract, SAMCO shall furnish a completed Certificate of Insurance to CITY's Public Works Department Director and City Clerk's Office. 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 Public Works Department Director and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

11.4 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 will CITY allow modifications whereupon CITY may incur increased risk.

11.5 SAMCo's financial integrity is of interest to CITY, therefore, subject to SAMCo's right to maintain reasonable deductibles in such amounts as are approved by CITY, SAMCo shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at SAMCo'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>
(A) Worker's Compensation, as applicable Employer's Liability, as applicable	Satutory \$1,000,00/\$1,000,000/\$1,000,000
(B) Commercial General (Public) Liability-to Include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000 or its equivalent in umbrella or excess liability coverage
(1) Premises/Operations	
(2) Independent Contractor's Liability	
(3) Products and Completed Operations	
(4) Personal Injury	
(5) Contractual Liability	

11.6 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, SAMCo shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

11.7 SAMCo 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 insured 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;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY

11.8 SAMCo 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 notice shall be give to CITY at the following address:

**City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966**

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

11.9 If SAMCo 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 exclusive remedy for failure of SAMCo to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon SAMCo'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 SAMCo to stop work hereunder, and/or withhold any payment(s) which become due, to SAMCo hereunder until SAMCo demonstrates compliance with the requirements hereof.

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

XII. INDEMNITY

12.1 SAMCo 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 SAMCo's activities under this agreement, including any acts or omissions of SAMCo, any agent, officer, director, representative, employee, consultant or subcontractor of SAMCo, 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 sits 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, SAMCo shall promptly advise the CITY in writing of any claim or demand against the CITY or SAMCo known to SAMCo related to or arising out of SAMCo's activities under this agreement and shall see to the investigation and defense of such

claim or demand at SAMCo's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving SAMCo of any of its obligations under this paragraph.

12.2 It is the express intent of the parties to this agreement, that the indemnity provided for in this article, is an indemnity extended by SAMCo 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. SAMCo 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 blame for which the indemnity shall apply, as set for above.

XIII. SEVERABILITY

13.1 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 the 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 revision 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. CHANGES AND AMENDMENTS

14.1 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 SAMCO.

XV. ENTIRE AGREEMENT

15.1 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.

XVI. NOTICES

16.1 All notices reports, and deliverables to be given or made by SAMCo to CITY pursuant to this Contract shall be given or made to the following or such place as may be designated by CITY from time to time in writing:

City of San Antonio
Public Works Department
P.O. Box 839966
San Antonio, Texas 78283-3966

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

San Antonio Mobility Coalition
602 E. Commerce
San Antonio, Texas 78205

XVII. NO PERSONAL LIABILITY

17.1 No elected official, director, officer, agent, or employee of CITY shall be charged personally or held Contractually liable by or to SAMCo 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.

XVIII. GOVERNING LAW

18.1 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 institute.

XIX. LEGAL AUTHORITY

19.1 The signer of this Contract for SAMCo represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of SAMCo and to bind the SAMCo to all of the terms, conditions, provisions and obligations herein contained.

XX. PARTIES BOUND

20.1 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.

Executed in duplicate originals this _____ day of _____, 2006

CITY OF SAN ANTONIO

SAN ANTONIO MOBILITY
COALITION, INC.

Sheryl Sculley,
City Manager

Victor M. Boyer
Executive Director

ATTEST:

Leticia M. Vacek, TRMC, CMC

APPROVED:

City Attorney

EXHIBIT "A" **SCOPE OF WORK**

SAMCo Deliverables:

Coordinate agenda items and/or delegation presentations before the Texas Transportation Commission, including a planned February 22, 2006 reception honoring Commissioners and a February 23, 2006 delegation appearance.

Organize and host annual Transportation Leadership Forum

Support implementation of the Metropolitan Planning Organization's Mobility 2025 plan and addition of new projects through increased funding tools

Identify opportunities for increased local, state and federal funding for transportation projects that will improve mobility in San Antonio.

Maintain a web site providing information on transportation issues, a calendar of events and links to other transportation related sites. Continue to produce a quarterly electronic newsletter on transportation funding issues.

A public relations effort on transportation needs, solutions, and funding sources to include periodic presentations to various community and civic groups and a PowerPoint presentation on these topics.

Coordinate and implement a 2006-7 SAMCo legislative agenda on transportation funding issues (state and federal) in concert with the City of San Antonio, Bexar County, VIA Metropolitan Transit, Alamo Regional Mobility Authority, and others.

Organize delegation(s) to Washington, DC to advocate for federal appropriations projects supported by the City of San Antonio and other SAMCo partners and to prepare for the next federal reauthorization process starting in 2009.

Continue to provide forum for discussion of next phases of implementation of Advanced Transportation District projects.

Continue to provide support for the Alamo Regional Mobility Authority and the proposed toll starter plan.

Represent the City at various membership meetings to include: TEX-21, Team Texas, TUTA, etc.

Continue to provide support for implementation of Commuter Rail, High Speed Rail, and Pass Through Financing.

Provide support for expanded regional corridors including proposed Mexico-Port of San Antonio
– Port of Corpus Christi plan (IH 37).

Support the following City of San Antonio projects through public education efforts and/or identification of new/additional funding sources:

- Bond Program (2006 or 2007)
- 1604/281 Corridor Needs (major arterials, cross streets, bridges, etc.)
- Fred/Med Project
- CBD Traffic Issues
- Signal Timing
- Bulverde Road
- Borgfield Road
- New Federal Earmarks – FTA Funds
- Potential City – Sponsored Pass – Through Finance Projects

Provide to City an annual report on or before January 31, 2007 regarding the level of success in achieving the goals and objectives of this Agreement.