

AN ORDINANCE 2006-05-18-0608

AUTHORIZING AN AGREEMENT WITH THE PROPERTY OWNER, MS. ROSE MARY OROSCO TO PROVIDE ENVIRONMENTAL SITE ASSESSMENT SERVICES AT 2223 GUADALUPE, IN CONNECTION WITH A BROWNFIELDS REDEVELOPMENT PROJECT; AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$19,829.74 UNDER AN EXISTING "ON CALL" PROFESSIONAL ENVIRONMENTAL ENGINEERING SERVICES CONTRACT TO ATC ASSOCIATES, INC., FOR SAID ENVIRONMENTAL SITE ASSESSMENT SERVICES, FROM ENVIRONMENTAL PROTECTION AGENCY GRANT FUNDS.

* * * * *

WHEREAS, the City of San Antonio was awarded a \$200,000.00 grant by the Environmental Protection Agency (EPA) to fund environmental assessments of sites in order to encourage the redevelopment of abandoned, vacant, or underutilized gasoline filling stations, and petroleum contaminated sites located within the City of San Antonio; and

WHEREAS, as defined by the EPA, brownfields are "abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination"; and

WHEREAS, no funds are used to perform remediation or clean-up; and

WHEREAS, the intent of the Environmental Site Assessments is to determine whether or not environmental contamination is present on the subject properties and to identify the impact, if any, the contamination may have on redevelopment; and

WHEREAS, the 2223 Guadalupe project, which EPA has reviewed and approved for eligibility requirements is located in the City of San Antonio's Neighborhood Commercial Revitalization Avenida Guadalupe Association Partnership Project target area, and the empowerment zone on the City's Westside; and

WHEREAS, this site is comprised of an abandoned gas station and automobile repair facility, which was constructed in the 1920's and has been designated as a historic structure; and

WHEREAS, the owner, Ms. Rose Mary Orosco, plans to redevelop the vacant property into a café, an office center, a staging area for the community to perform and display arts and crafts, a shoe repair business, an area where magazines, books, and music can be obtained or purchased, and professional counseling offices; and

WHEREAS, the environmental contractor selected for this site assessment was approved through the On-Call Professional Environmental Engineering Services Contract approved by City Council and the City's Environmental Services Department, which serves as the program's quality control arm under the City's grant agreement with the EPA; **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 an agreement with the property owner, Ms. Rose Mary Orosco to provide environmental site assessment services at 2223 Guadalupe, in connection with a Brownfields Redevelopment Program Project. A copy of said agreement, in substantially final form, entitled Participation Understanding with Consent for Promotional Use and Right of Access, is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. The City Manager or her designee is further authorized to provide payment in the amount of \$19,829.74 under an existing "on call" professional environmental engineering services contract to ATC Associates, Inc., for said environmental site assessment services, from Environmental Protection Agency Grant funds.

SECTION 3. Fund 26010000 entitled "Environmental Protection Agency" and Internal Order 161000000052 entitled "Brownfields Petroleum Assessment Grant", are hereby designated for use in the accounting for the fiscal transaction in connection with the Brownfields Redevelopment Program Project described herein.

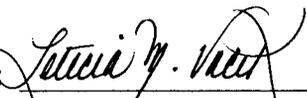
SECTION 4. The sum of \$19,829.74 is hereby appropriated in the above designated fund and will be disbursed from GL 5201040 "Fees to Professional Contractors".

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall be effective on and after May 28, 2006.

PASSED AND APPROVED this 18th day of May, 2006.

ATTEST:



City Clerk



M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM:



for City Attorney

Agenda Voting Results

Name: 27.

Date: 05/18/06

Time: 10:52:26 AM

Vote Type: Multiple selection

Description: An Ordinance authorizing an agreement with the property owner, Ms. Rose Mary Orosco to provide environmental site assessment services at 2223 Guadalupe, in connection with a Brownfields Redevelopment Program Project; and authorizing payment in the amount of \$19,829.74 under an existing "on call" professional environmental engineering services contract to ATC Associates, Inc, for said environmental site assessment services, from Environmental Protection Agency Grant funds. [Presented by David D. Garza, Director, Neighborhood Action; Jelynn Leblanc Burley, Deputy City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1	Not present			
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

CITY OF SAN ANTONIO BROWNFIELDS REDEVELOPMENT PROGRAM

**Participation Understanding with
Consent for Promotional Use
and
Right of Access**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Under authority of Ordinance No. _____, passed and approved on _____(date) Ms. Rose Mary Orosco, "Participant", owner of the property located at 2223 Guadalupe (street address), more particularly described as NCB 2430, Block 7, Lots 7A, 7B, 7C, and 7D ("the Property"), and the City of San Antonio ("City") enter into this Agreement, and for exchange of consideration recited herein, agree as follows:

**I. PROGRAM PARTICIPATION
and Promotional Consent**

Participant(s) hereby urge and give consent to the City for the Property to be included in the City of San Antonio Brownfields Program ("the Program"), to become a part of the local brownfields inventory, and extend to the City opportunity to promote the property as a San Antonio Brownfields site at any local, state, national meeting or conference, or any media event deemed appropriate by the City. Participant agrees to cooperate in appearing at such events and sharing program experiences with others if invited to do so by the City. Participants consent to allow Program personnel to photograph the site at various phases of inspection and / or development for promotional purposes.

Participant warrants to the City her authority to provide such consent and to enter into this Agreement.

II. ENVIRONMENTAL SITE ASSESSMENT (ESA)

1. The aforesaid Property is hereby included in the City of San Antonio Brownfields Redevelopment Program.
2. The City will pay the cost of a Phase II Environmental Site Assessment(s) (ESAs), as the City may deem necessary for the property, not to exceed \$19,839.74.
3. The City reserves the right, but does not promise, to search for additional sources of funding or in-kind services from governmental entities if needed to complete the assessment in the event assessment costs exceed funds allocated to the Property.
4. Participant effects a grant of access to the City, as described below, and will similarly grant access to other governmental entities providing funding or in-kind services to complete participation in the Program.
5. Participant grants permission for the City or other governmental entities providing funding or in-kind services to use and share ESA(s) information and to release ESA information upon request.
6. Participant understands that the documentation produced under this Agreement is subject to the Texas Public Information Act and/or other public records disclosure laws. Owners, agents, developers, and others seeking environmental information about the Property may have access to ESA results as an "Open Record"; however, no person shall look to or rely upon the City, its employees, agents or its private consultants to warrant or guarantee ESA reports. Any person so relying shall do so at his/her own risk.
7. Participant understands this Agreement does not obligate the City to:
 - a. complete the ESA(s) if the cost of finalizing the assessment exceeds \$19,893.74, or
 - b. spend \$19,893.74 on the property if the cost of the ESA(s) is less than \$19,893.74, or
 - c. perform remediation on the property based on the information in the ESA(s), or

- d. assure or guarantee maintenance or enhancement of Property values on account of the ESA(s) or participation in the Program.
8. Participant understands this agreement is not effective until duly authorized by the City Council.
9. [Optional provision: Participant agrees to contribute \$_0_ to the ESA(s)]

III. RIGHT OF ACCESS

Participant having consented above to participate in the Program, and in consideration for City's acceptance of Participant's Property in the Program and in further consideration of the City's taking responsibility for performance of environmental investigation of said Property, Participant hereby grants and extends to the City of San Antonio, its agents, employees, and contractors the right of access under, over and across the Property for the purpose of performing investigation necessary to a Phase I, if further necessary, and / or Phase II ESA(s). The City of San Antonio, its agents, employees, contractors and assignees shall be permitted to enter upon said Property for such purpose.

IV. GENERAL PROVISIONS

1. PARTICIPANT 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 or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to PARTICIPANT's participation under this AGREEMENT, including any acts or omissions of PARTICIPANT, any agent, officer, director, representative, employee, consultant or subcontractor of PARTICIPANT, and their respective officers, agents, employees, directors and representatives while in the exercise of 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 CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, AGREEMENT or otherwise, to any other person or entity. PARTICIPANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or PARTICIPANT known to PARTICIPANT related to or arising out of PARTICIPANT's participation under this AGREEMENT and shall see to the investigation and defense of such claim or demand at PARTICIPANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving PARTICIPANT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by PARTICIPANT 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. PARTICIPANT 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, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

2. This agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this agreement shall be in Bexar County, Texas. This agreement is made and is to be performed in Bexar County, Texas,

and is governed by the laws of the State of Texas.

Executed this _____ day of _____, 20_____.

OWNER:

Rose Mary Orosco
(printed name)

CITY of SAN ANTONIO:

(insert printed name here)

Title: _____
City Manager, Assistant City
Manager, or an Assistant to the
City Manager

Approved as to form:

Office of the City Attorney
Michael Bernard, City Attorney

by: _____

Printed Name: _____
Assistant City Attorney