

AN ORDINANCE 2006-06-29-0788

AUTHORIZING THE RENEWAL OF AN ADMINISTRATIVE SERVICES AGREEMENT WITH THE SAN ANTONIO FIRE AND POLICE PENSION BOARD OF TRUSTEES IN AN ANNUAL AMOUNT OF \$25,363.00 PAYABLE TO THE CITY FOR ADMINISTRATIVE SERVICES PROVIDED TO THE FUND THROUGH SEPTEMBER 30, 2007; AND AUTHORIZING TWO ADDITIONAL ONE YEAR RENEWAL OPTIONS.

* * * * *

WHEREAS, the San Antonio Fire and Police Pension Fund (“Fund”) is a statutory trust which provides pension benefits for San Antonio Fire Fighters, Police Officers and their beneficiaries; and

WHEREAS, the City of San Antonio (“City”) has provided certain administrative services to the Fund pursuant to an Administrative Services Agreement (“Agreement”), approved by Ordinance 94614, on September 27, 2001; and

WHEREAS, said Agreement terminated on September 30, 2005, and the Fund has requested that the City continue to provide such administrative services for a period from October 1, 2005, through September 30, 2007; and

WHEREAS, the City has agreed to continue to provide such services for said period of time; and

WHEREAS, in order to memorialize the agreement of the parties, it is necessary to enter into another Administrative Services Agreement; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee, is hereby authorized to execute an Administrative Services Agreement which is attached hereto and incorporated herein by reference for all purposes as Attachment I, with the San Antonio Fire and Police Pension Fund Board of Trustees (“Fund”), for the provision of certain administrative services to the Fund, by the City of San Antonio, for the period from October 1, 2005, to September 30, 2007. The terms of such Administrative Services Agreement, are hereby approved.

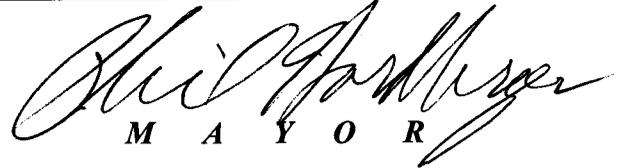
SECTION 2. Said Administrative Services Agreement is hereby authorized to be renewed beyond the initial term for two (2) additional one-year terms, upon mutual agreement of the parties.

SECTION 3. The City of San Antonio is hereby authorized to accept payment for said services in the amount of twenty-nine thousand, four hundred twenty-three dollars and no cents (\$29,423.00) the first year, and twenty-five thousand, three hundred sixty-three dollars and no cents (\$25,363.00) for each year thereafter. Fees generated by this ordinance shall be deposited into Fund 11001000, General Fund, Internal Order 207000000254, F&P Payroll Reimbursement, General Ledger 6301120, Recovery of Current Year Expenditures.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

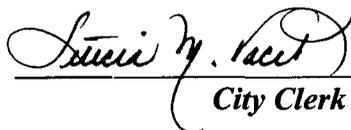
SECTION 5. This ordinance shall take effect ten days from the date of the passage.

PASSED AND APPROVED this 29th day of June, 2006.


M A Y O R

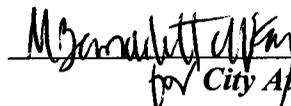
PHIL HARDBERGER

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

ADMINISTRATIVE SERVICES CONTRACT

STATE OF TEXAS

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§
§

COUNTY OF BEXAR

This **ADMINISTRATIVE SERVICES CONTRACT** (hereinafter "Contract") is entered into by and between the City of San Antonio (hereinafter "**CITY**"), a Texas Municipal Corporation, acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on _____, and the Board of Trustees of the Fire and Police Pension Fund, San Antonio (hereinafter "**FUND**"), acting by and through its Executive Director.

I. PURPOSE

The purpose of this Contract is to state the terms and conditions under which **CITY** will provide administrative services to the **FUND**.

II. DEFINITIONS

- 2.1 "Board" or "Board of Trustees," as used herein, shall refer to the Board established pursuant to Article 6243o of the Texas Revised Civil Statutes, which governs the firefighters' and police officers' pension fund.
- 2.2 The term "**CITY**," as used herein, shall refer to the City of San Antonio.
- 2.3 The term "**Custodial Bank**," as used herein, shall refer to the bank designated and utilized by **FUND**.
- 2.4 The term "**FUND**," as used herein, shall refer to the Firefighters' and Police Officers' Pension Fund, created pursuant to Article 6243o of the Texas Revised Civil Statutes.
- 2.5 The term "**Pension Office**," as used herein, shall refer to the administrative offices created by the Board and located at 311 Roosevelt, San Antonio, Texas.
- 2.6 The term "**Retiree**," as used herein, shall refer to a member of the **FUND** who has terminated employment with a right to either a service or disability retirement pension, pursuant to Article 6243o of the Texas Revised Civil Statutes.

III. SCOPE OF SERVICES

- 3.1 **CITY** agrees to provide the following administrative services to **FUND**:

ATTACHMENT I

- 3.1.1 process a monthly Retiree payroll for Retirees and beneficiaries, including cost of living adjustments, additional checks (thirteenth check, fourteenth check, etc.) and voluntary and involuntary deductions;
 - 3.1.2 process bi-weekly payroll for Pension Office staff;
 - 3.1.3 establish and process new Retirees, including backdrop payments, rollovers, if applicable, and contribution refunds, if necessary;
 - 3.1.4 perform all payroll tax reporting for Pension Office staff, as well as process transactions for personnel changes to Pension Office;
 - 3.1.5 provide Automatic Data Processing and utilize CITY's mainframe to process Pension Office payrolls and payroll edits, if necessary;
 - 3.1.6 prepare, annually, IRS Form 1099R for all retirees, and file Form with the Internal Revenue Service (hereinafter "IRS");
 - 3.1.7 prepare, annually, IRS Form 945, and files with the IRS; and
 - 3.1.8 prepare, annually, IRS Form W-2 for Pension Office.
 - 3.1.9 permit all active member trustees to use such administrative leave as necessary to attend to the affairs of FUND in furtherance of the performance of their fiduciary duties.
- 3.2 FUND agrees to reimburse CITY, based on actual cost or assessed premium, for the following as applicable:
- 3.2.1 participation in CITY's Employee Benefit Program and Workers' Compensation Program;
 - 3.2.2 automatic Data Processing time for specific requests and system integration;
 - 3.2.3 communications made for the Pension Office;
 - 3.2.4 utilities for the Pension Office;
 - 3.2.5 mailing of retiree checks, direct deposits, required mailings and requested mailings;
 - 3.2.6 binding, printing and reproduction services, as requested by FUND;
 - 3.2.7 Retiree pension payroll and other related payments made on behalf of FUND pursuant to Article 6243o of the Texas Revised Civil Statutes;

3.2.8 Salaries, related taxes and benefits for Pension Office Staff; and

3.2.9 All other services requested by **FUND** and agreed to be provided by **CITY**.

3.3 **FUND** agrees to abide by and be bound by the conditions, terms and requirements of the SAP Agreement, which requires executing and signing Exhibit A, "Authorized Affiliate Agreement" attached hereto and delivering it to SAP.

IV. TERM AND RENEWAL

4.1 This Contract shall commence on October 1, 2005, and shall terminate September 30, 2007, unless either party terminates the Contract in accordance with the provisions herein contained. **CITY** retains the right to terminate this Contract at the expiration of each of **CITY**'s budget periods.

4.2 This Contract may be renewed for two (2) additional one-year periods upon agreement of the parties hereto. Any such agreement shall be evidenced by a writing, executed by the parties and containing any new or different provisions applicable to the extended period. In the event of any conflict between the extended terms of this Contract, the terms of this Contract shall govern.

V. CONSIDERATION

5.1 For and during the initial term and extended period, in consideration for services provided by **CITY**, as listed in Section III, subsection 3.1 above, **FUND** agrees to pay **CITY** for the first year a fee of twenty-nine thousand, four hundred twenty-three dollars and no cents (\$29,423.00), and twenty-five thousand, three hundred sixty-three dollars and no cents (\$25,363.00), for each year thereafter.

5.2 In addition, **FUND** agrees to reimburse **CITY** for the items listed in Section III, subsection 3.2 above, based on actual costs or assessed premium.

VI. RESERVATION OF RIGHTS

6.1 **CITY** shall have the right, at its option and sole discretion, to enter into one or more contracts with individuals or entities to perform any of the services herein listed required of **CITY**.

VII. RETENTION AND ACCESSIBILITY OF RECORDS

7.1 Records related to this Contract, produced by **CITY** pursuant to the provision of services hereunder, will be maintained by **CITY** in accordance with its applicable record retention policy.

- 7.2 **FUND** agrees to make available to **CITY**, and its designated representatives, any documents pertaining to **FUND** and the functions of the Board for the purpose of examining, inspecting, auditing and/or copying same. Copies of said documents shall be provided to **CITY**, at the City's request and at no cost to **CITY**.

VIII. INDEPENDENT AUDIT

- 8.1 **FUND** agrees to procure and utilize the services of an independent auditor to conduct an annual financial audit of **FUND**, at its sole cost and expense.
- 8.2 **FUND** will provide a copy of such annual audit(s) to **CITY** no later than December 15th, following the close of the previous fiscal year.

IX. INDEMNITY

- 9.1 **FUND** 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 **FUND**'s activities under this Contract, including any acts or omissions of **FUND**, any agent, officer, director, representative, employee, consultant or subcontractor of **FUND**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, 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. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT FUND AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 9.2 **FUND** shall promptly advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **FUND**, known to **FUND**, related to or arising out of **FUND**'s activities under this Contract and shall see to the investigation and defense of such claim or demand at **FUND**'s cost. The

CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FUND of any of its obligations under this paragraph.

- 9.3 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

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** Termination by Notice. This Contract or any part hereof may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than 30 calendar days or more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 10.3** Termination for Cause. Should either party default in the performance of any of the terms or conditions of this Contract, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this Contract shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.
- 10.4** Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this Contract shall automatically terminate as of the effective date of such prohibition.
- 10.5** Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from FUND to CITY or to such person(s) or firm(s) as the CITY may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at FUND's sole cost and expense. All files are the property of the CITY and, at the CITY's request, will be delivered at no cost to the CITY or its designated recipient on the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within 30 calendar days after the effective termination date.

- 10.6** Upon termination or cancellation of this Contract, **CITY** may immediately commence audit of **FUND**'s books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **FUND** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 10.7** If **CITY** conducts an audit, either party to this Contract may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **FUND** and **CITY**. The results from said third audit shall be final.

XI. AMENDMENTS

- 11.1** Except where the terms of this Contract expressly provide otherwise, any revisions, alterations, additions, or deletions to the terms of this Contract shall be effected by amendment, in writing, executed by **CITY** and **FUND**. Any such revision, alteration, addition or deletion shall be subject to subsequent City Council and Board approval.
- 11.2** It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations and laws applicable hereto may occur during the term of this Contract, and that any such changes automatically shall be incorporated herein and become a part of this Contract as of the effective date of such rule, regulation or law, without any written amendment or further approval.

XII. RIGHTS AND BENEFITS

- 12.1** This Contract shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.
- 12.2** No provision within this Contract is intended to create any right or interest in any third party.
- 12.3** This Contract is not intended to enlarge or limit any rights, duties or obligations of **CITY** or **FUND** under any applicable law, rule, regulation or other contractual document.

XIII. INDEPENDENT CONTRACTOR

- 13.1** The parties hereto understand and agree that they are independent contractors, that neither party is, nor shall be considered to be an agent, employee or representative of the other and neither party hereto shall act or represent itself, directly or indirectly or by implication, as an agent or employee of the other or in any matter assume or create any obligation on behalf of or in the name of the other. The doctrine of *respondeat superior* shall not apply as between **CITY** and **FUND**, its

officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **FUND** and **CITY**.

- 13.2** No Third Party Beneficiaries: For purposes of this Contract, including its intended operation and effect, the parties specifically agree and contract that (1) this Contract only affects matters/disputes between the parties to this Contract and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this Contract; and (2) the terms of this Contract are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **FUND**.

XIV. NOTICES

- 14.1** Notices to **CITY** required or appropriate under this Contract shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, postage prepaid, addressed to:

City of San Antonio
Attn: Ben Gorzell, Jr., Department of Finance
P.O. Box 839966
San Antonio, Texas 78283-3966

AND

City of San Antonio
Attn: Troy Elliott, Department of Finance
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by **CITY**, from time to time. Notices to **FUND** shall be deemed sufficient if in writing and mailed, certified mail, return receipt requested, postage prepaid, addressed to **FUND** at:

Fire and Pension Fund, San Antonio
Attn: Warren Schott, Executive Director
311 Roosevelt
San Antonio, Texas 78210

or to such other address as may have been designated in writing by **FUND**, from time to time.

XV. LEGAL AUTHORITY

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

XVI. VENUE AND GOVERNING LAW

- 16.1** Venue of any court action brought directly or indirectly by reason of this Contract shall be in Bexar County, Texas. This Contract shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XVII. GENDER

- 17.1** Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVIII. CAPTIONS

- 18.1** The captions contained in this Contract are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this Contract.

XXIV. ENTIRE AGREEMENT

- 19.1** This Contract, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this Contract. No other agreements, oral or otherwise, regarding the matters of this Contract shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto and duly executed by the parties hereto.

XXV. SEVERABILITY

- 20.1** If any clause or provision of this Contract is illegal, invalid 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 to this Contract that, in lieu of each clause or provision of this Contract that is illegal, invalid or unenforceable, there be added as part of this Contract a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXVI. ACKNOWLEDGMENT

21.1 Each of the parties acknowledges that it has read this Contract, understands its contents and executes this Contract voluntarily.

EXECUTED this the _____ day of _____, 2006.

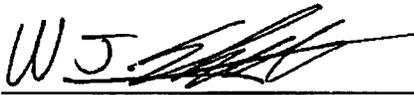
CITY

FUND

CITY OF SAN ANTONIO

**BOARD OF TRUSTEES
Fire and Police Pension
Fund, San Antonio**

Sheryl Sculley
City Manager



Warren Schott
Executive Director

APPROVED AS TO FORM:

Michael Bernard
City Attorney