

AN ORDINANCE 2009-05-14-0386

AUTHORIZING A FUNDING AGREEMENT WITH THE MAIN PLAZA CONSERVANCY FOR DESIGN AND CONSTRUCTION OF SHADE STRUCTURES IN MAIN PLAZA AND APPROVING \$90,000.00 IN MATCHING FUNDS TO THE CONSERVANCY'S PRIVATELY-RAISED \$250,000.00.

* * * * *

WHEREAS, the Main Plaza is a historic public plaza and park dedicated with the founding of the City of San Antonio; and

WHEREAS, the City of San Antonio, in partnership with Bexar County, has redeveloped Main Plaza through capital improvements which include improved drainage, pedestrian accessibility, Americans with Disabilities Act (ADA) accessibility and reinforcement of the historical nature of the Plaza; and

WHEREAS, the Main Plaza is a City-owned park operated by the Main Plaza Conservancy under a Management Agreement authorized by City Council on January 17, 2008 and executed on February 20, 2008; and

WHEREAS, under the Management Agreement, the Main Plaza Conservancy is authorized to manage Main Plaza providing special events programming, concessions and daily grounds maintenance for a five-year term ending March 30, 2013; and

WHEREAS, this ordinance will authorize a Funding Agreement with the Main Plaza Conservancy for the expenditure of an amount not to exceed \$90,000.00 for the design and construction of shade structures in Main Plaza; and

WHEREAS, in order to address the need for additional shade in the Main Plaza, the Conservancy has raised funds in the amount of \$250,000.00 for this project, and is going to undertake the work on behalf of the City; and

WHEREAS, the construction of this project is anticipated to be completed within one year of the execution of the funding agreement, if authorized by this Ordinance; and

WHEREAS, these funds were allocated by City Councilwoman Mary Alice Cisneros in the \$2.5 million portion of the \$30 million amendment to the Six-Year Capital Improvements Plan and 5-Year Infrastructure Management Program; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation or his designee is authorized to execute a funding agreement with the Main Plaza Conservancy for design and construction of shade structures in Main Plaza and approving \$90,000.00 in matching funds to the Conservancy's privately-raised \$250,000.00. A copy of the funding agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 2. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00999, Main Plaza, shall be revised by decreasing SAP WBS Element 40-00999-05-02 entitled Construction, SAP GL account 5201140, by the amount of \$50,000.00.

SECTION 3. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 40-00999, Main Plaza, shall be revised by increasing SAP WBS Element 40-00999-05-02-01 entitled City Construction, SAP GL account 5201140, by the amount of \$50,000.00.

SECTION 4. The amount of \$40,000.00 is appropriated in SAP Fund 43904029, 2009 Tax Notes, SAP WBS TN-20094-01-01-08, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 19-00011-90-01. The amount of \$40,000.00 is authorized to be transferred to SAP Fund 43099000, Certificates of Obligation Capital Projects.

SECTION 5. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 19-00011, Main Plaza, shall be revised by increasing SAP WBS element 19-00011-90-01 entitled Transfer From TN-20094-01-01-08, SAP GL account 6101100 – Interfund Transfer In, by the amount of \$40,000.00.

SECTION 6. The amount of \$40,000.00 is appropriated in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 19-00011, Main Plaza, SAP WBS 19-00011-05-08, SAP GL account 5201140 entitled \$30 Million (Tax Notes).

SECTION 7. This ordinance authorizes a funding agreement with the Main Plaza Conservancy in the amount up to \$90,000.00 from SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definitions 40-00999, Main Plaza, and 19-00011, Main Plaza and payment is authorized to be encumbered and made payable to Main Plaza Conservancy for design and construction costs.

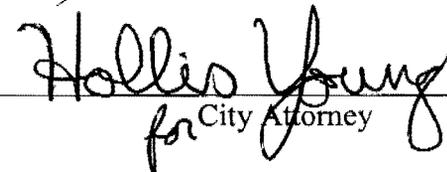
SECTION 8. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, 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 9. This ordinance shall be effective on and after May 24, 2009.

PASSED AND APPROVED this 14th day of May, 2009.

ATTEST: 
City Clerk


M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM: 
for City Attorney

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's executive director shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Capital Improvements Management Services ("CIMS") or his designee shall be responsible for the administration of this Agreement on behalf of City until the completion of the Project.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission, and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 Grantee shall submit all future changes to the CIMS Director or his designee for review and approval to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the CIMS Director or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 Grantee shall utilize an objective competitive solicitation process for selection of any needed contractors paid for, in whole or in part, with City funds.

3.03 Grantee shall comply with Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

3.04 Grantee shall comply with Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that its construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.

3.05 Grantee's Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that the Project improvements shall become the property of the City upon completion of the project. Grantee shall file any warranty claims for any defects in the material or workmanship in the Project and shall, at the City's option, assign such contractual rights to City.

V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$100,000.00.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Projects. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

6.03 In order to be reimbursed for work completed, Grantee shall submit to the City a report (in substantially the same form as Attachment I) indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation (i.e.

copies of paid itemized invoices) as requested by the City. Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans.

6.04 All requests for reimbursement shall be submitted through the City's Program Management Portal ("Portal"). Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.05 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice will provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.06 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) working days of receipt of completed invoice as defined above.

6.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Acquisition contract for shade structures
- Construction contract
- Construction contingencies

- Costs of advertising for bids for construction of the project.

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Grantee's General Contractor and shown on the approved Plans
- Any advertising not authorized by subsection 7.01

7.03 Written requests for prior approval of expenditures outside of those listed in 7.01 shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Grantee further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.
- (B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.
- (C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.

- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

IX. ACCESSIBILITY OF RECORDS

9.01 At any time and as often as City may deem necessary, upon seven (7) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it will cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

X. MONITORING AND EVALUATION

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and with all other laws, regulations and ordinances related to the performance hereof.

XI. INDEMNITY

11.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and 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 Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. 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 GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR 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.

11.02 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or entity. Grantee shall advise the City in writing within 24 hours of any claim or demand against

the City or Grantee known to Grantee related to or arising out of Grantee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Grantee's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this paragraph.

XII. INSURANCE

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Capital Improvements Management Services (CIMS) Department, which shall be clearly labeled, "Main Plaza Shade Structures" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's CIMS Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

12.03 GRANTEE's financial integrity is of interest to the City; therefore, subject to GRANTEE's right to maintain reasonable deductibles in such amounts as are approved by the City, GRANTEE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at GRANTEE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

d. Personal Injury e. Contractual Liability	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence
* if applicable	

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 12.03 (Insurance table) from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names the Grantee and the CITY as an additional insured.

12.05 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the 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). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. GRANTEE shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Capital Improvement Management Services
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 GRANTEE agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the 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 the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

12.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, GRANTEE shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend GRANTEE's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

12.09 It is agreed that GRANTEE's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

12.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

XIII. NONDISCRIMINATION

13.01 Grantee covenants that it, or agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises, which said discrimination Grantee acknowledges is prohibited.

XIV. CONFLICT OF INTEREST

14.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Grantee covenants and agrees that no member of its governing body or of its staff, or any of their family members to within the 2nd degree of consanguinity or affinity shall possess any interest in the City funds provided under this contract. Grantee further covenants and agrees that under this contract it will fully comply with all federal, state and local statutes, codes and policies regulating, prohibiting or relating to conflicts of interest.

14.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement 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;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XV. POLITICAL ACTIVITY

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XVIII. CHANGES AND AMENDMENTS

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. ASSIGNMENTS

19.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XX. SEVERABILITY OF PROVISIONS

20.01 If any clause or provision of this Agreement 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 Agreement 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 Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement 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.

XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

21.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XXII. ENTIRE AGREEMENT

22.01 This Agreement 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 Agreement shall be deemed to exist or to bind the

Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXIII. NOTICES

23.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY: Director Capital Improvements Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With Copies to:

Director Downtown Operations Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

GRANTEE: Main Plaza Conservancy
Executive Director
111 Soledad, Suite 811
San Antonio, Texas 78205

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXIV. PARTIES BOUND

24.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXV. RELATIONSHIP OF PARTIES

25.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXVI. TEXAS LAW TO APPLY

26.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

XXVII. GENDER

27.01 Words of any gender used in this Agreement 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

28.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIX. LEGAL AUTHORITY

29.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

29.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

CITY OF SAN ANTONIO

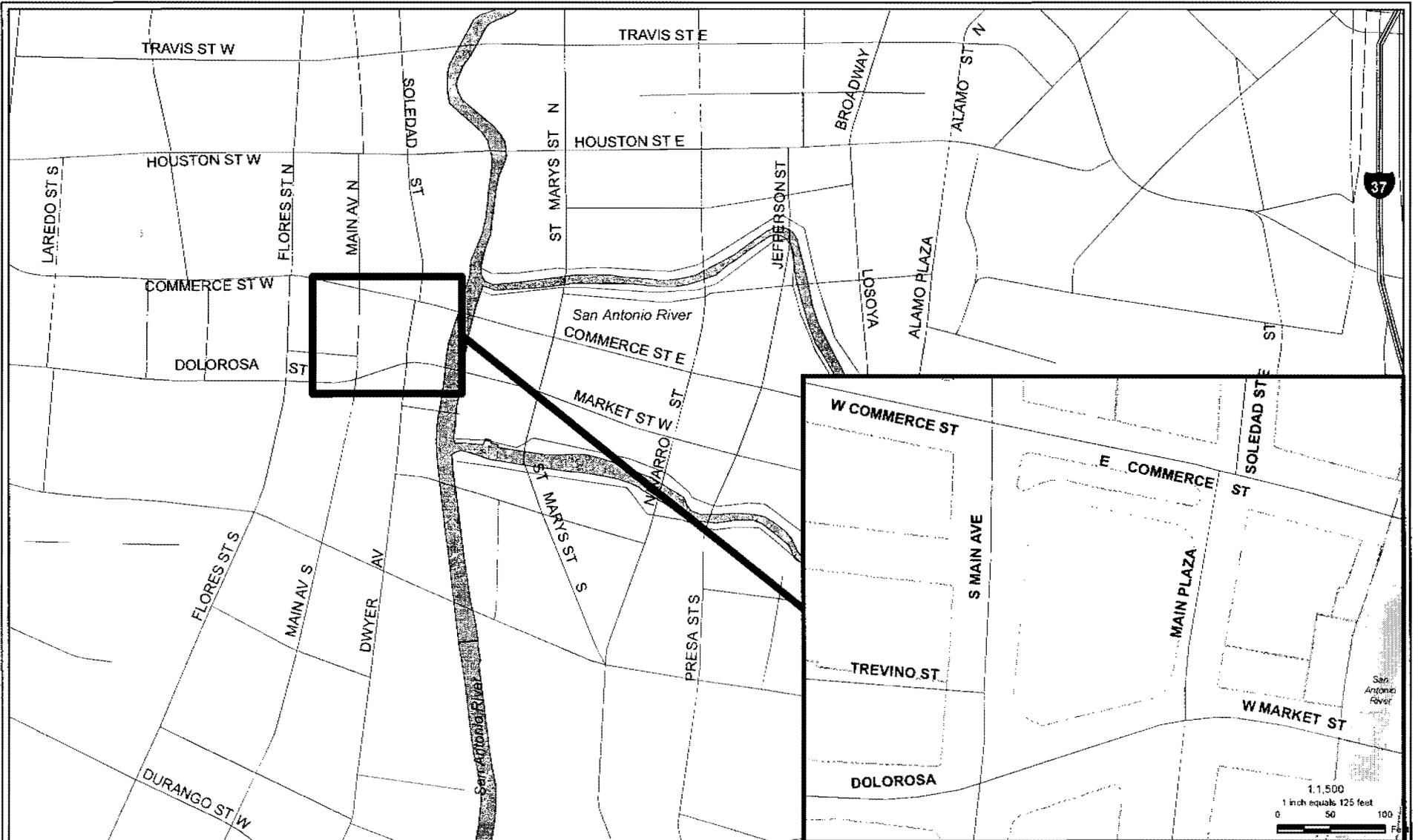
MAIN PLAZA CONSERVANCY

By: _____
Sheryl Sculley
City Manager

By: _____
Jane Pauley-Flores
Executive Director

APPROVED AS TO FORM:

CITY ATTORNEY



Data Source: City of San Antonio Enterprise GIS, Beta Metro 311, Beta Approval District

Map Created by: Balen L. Garcia
 Map file location: \\fscommon1\Misc401\Technical Services CIMSGIS\PROJECTS\TECHNICAL_SERVICES\Main Plaza\Main_Plaza.mxd

Map Last Edited: 14th April 2009
 PDF Filename: 0904TB12.pdf

Main Plaza  San Antonio River  BCAD Parcels 



City of San Antonio
 Main Plaza

1:6,000
 1 inch equals 500 feet
 0 250 500
 Feet

City of San Antonio
 Capital Improvements
 Management Services
 Director: Michael S. Frabee, P.E.
 Municipal Plaza Building
 114 West Commerce Street
 San Antonio, TX 78205

