

ORDINANCE

2022-11-03-0842

APPROVING THE ACQUISITION OF A CONSERVATION EASEMENT ON AN APPROXIMATE 116.5-ACRE TRACT OF LAND KNOWN AS THE HAMPTON PROPERTY LOCATED IN BEXAR COUNTY, TEXAS AND AUTHORIZING PAYMENT TO ALAMO TITLE COMPANY AS ESCROW AGENT FOR DUE DILIGENCE, CLOSING COSTS AND EXECUTION OF A CONSERVATION EASEMENT IN THE AMOUNT OF \$2,524,966.20 FROM PROPOSITION 1 OF THE EDWARDS AQUIFER PROTECTION SALES TAX FUND INCLUDED IN THE FY 2023 – FY 2028 CAPITAL IMPROVEMENT PROGRAM.

* * * * *

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

SECTION 1. The City Manager or designee is authorized to acquire an aquifer-protection conservation easement on approximately a 116.5-acre tract of land known as the Hampton Property located in Bexar County, Texas as depicted on the map in **ATTACHMENT I**, being more particularly described by metes and bounds in **ATTACHMENT II**, and substantially in the form attached as **ATTACHMENT III**.

SECTION 2. The City Manager or designee is authorized to consummate the transaction contemplated in the described easements. The City Manager or designee should take all other actions necessary or convenient to effectuate the transaction, including agreeing to the form of and executing all necessary or convenient instruments and agreements.

SECTION 3. Payment is authorized to be encumbered and made payable to Alamo Title Company in an amount not to exceed \$ 2,524,966.20.00 for a conservation easement totaling 116.5-acres of land known as the Hampton Property located in Bexar County. Payment is in support of the Edwards Aquifer Land Acquisitions Conservation Easement Proposition 1 Edwards Aquifer Protection Program Project using the WBS Elements and GL Accounts in the table below. Funding for this project is provided by the Edwards Aquifer 2015 Fund and is in the FY2023 - FY2028 Capital Improvements Program.


WBS	GL	AMOUNT
26-00638-01-11	5209010	\$2,512,516.20
26-00638-01-06	5201040	7,000.00
26-00638-01-11	5201040	5,450.00
TOTAL		\$2,524,966.20

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance becomes effective 10 days after passage, unless it receives the eight votes requisite to immediate effectiveness under San Antonio Municipal Code § 1-15, in which case it becomes effective immediately.

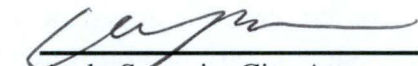
PASSED AND APPROVED this 3rd day of November, 2022.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:


Andy Segovia, City Attorney



City of San Antonio

City Council Meeting November 3, 2022

15.

2022-11-03-0842

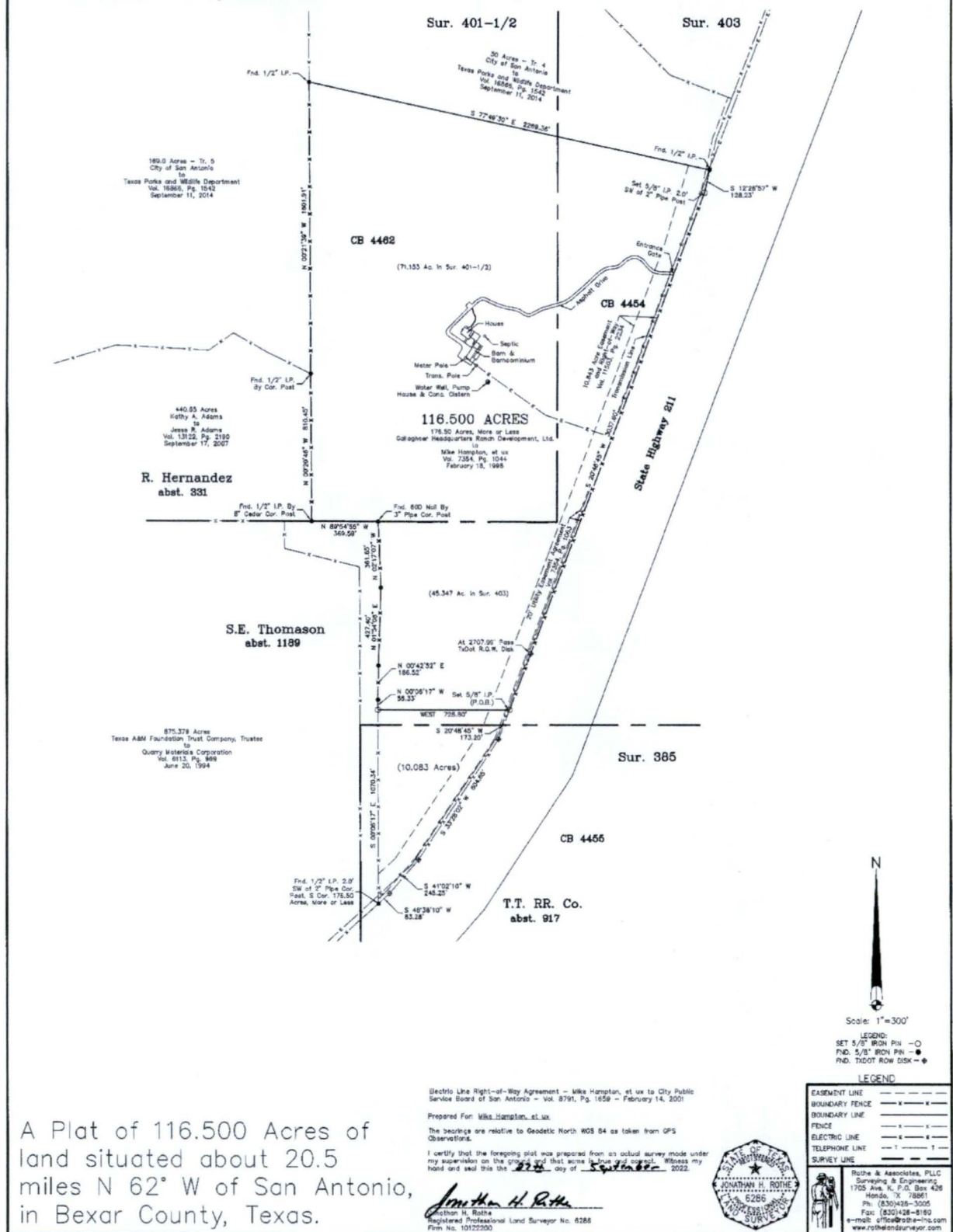
Ordinance approving the fee simple acquisition over the Edwards Aquifer Recharge Zone on a 116.5-acre tract of land known as the Hampton Property located in Bexar County, Texas and authorizing payment to Alamo Title Company as escrow agent for due diligence, closing costs and execution of a conservation easement in the amount of \$2,524,966.20 from Proposition 1 of the Edwards Aquifer Protection Sales Tax fund included in the FY 2023 – FY 2028 Capital Improvement Program. [David W. McCary, Assistant City Manager; Homer Garcia III, Director, Parks and Recreation]

Councilmember Castillo moved to Approve on the Consent Agenda. Councilmember Rocha Garcia seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

ATTACHMENT I

Attachment | Bexar County, Texas



A Plat of 116.500 Acres of land situated about 20.5 miles N 62° W of San Antonio, in Bexar County, Texas.

ATTACHMENT II

Attachment II

THE STATE OF TEXAS
COUNTY OF BEXAR

PREPARED FOR: Mike Hampton, et ux

FIELD NOTES TO DESCRIBE

A survey of 116.500 acres of land situated about 20.5 miles N 62° W of San Antonio, in Bexar County, Texas, being 71.153 acres out of Survey No. 401-1/2, Abstract No. 331, County Block 4462, R. Hernandez, original Grantee, being 45.347 acres out of Survey No. 403, Abstract No. 1189, County Block 4454, S.E. Thomason, original Grantee, being a portion of that certain 176.50 acres of land, more or less, described in a Deed to Mike Hampton, et ux from Gallagher Headquarters Ranch Development, Ltd., dated February 18, 1998, as recorded in Volume 7354 on Page 1044 of the Official Public Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING: At a 5/8" iron pin set in fence on the Northwest R.O.W. line of State Highway 211 and the Southeast line of said 176.50 acres of land, more or less, for the Northeast corner of a certain 10.083 acres of land, this day surveyed, and the Southeast corner of this survey from which a 1/2" iron pin found 2.00 feet Southwest of a 2" diameter pipe corner post for the South corner of said 176.50 acres of land, more or less, bears S 20-48-45 W 173.20 feet, S 33-28-02 W 804.65 feet, S 41-02-10 W 245.25 feet, and S 46-38-10 W 83.28 feet;

THENCE: Across said 176.50 acres of land, more or less, and along the North line of said 10.083 acres of land, WEST 728.80 feet to a 5/8" iron pin set in fence on the lower West line of said 176.50 acres of land, more or less, and the lower East line of that certain 440.65 acres of land described in a Deed to Jesse R. Adams from Kathy A. Adams, dated September 17, 2007, as recorded in Volume 13122 on Page 2190 of the aforementioned Official Public Records, for the Northwest corner of said 10.083 acres of land, and the lower Southwest corner of this survey;

THENCE: Generally along fence, the lower West line of said 176.50 acres of land, more or less, and the lower East line of said 440.65 acres of land, the following courses:

N 00-06-17 W 55.33 feet to a 5/8" iron pin found for an angle point;

N 00-42-52 E 186.52 feet to a 5/8" iron pin found for an angle point;

N 01-54-08 E 427.40 feet to a 5/8" iron pin found for an angle point; and

N 02-17-07 W 361.65 feet to a 60D nail found by a 3" diameter pipe corner post on the recognized lower North line of said Survey No. 403 and the recognized South line of said Survey No. 401-1/2, for an interior

Attachment II

Mike Hampton, et ux (116.500 Acres) – Page 2

corner of said 176.50 acres of land, more or less, the lower Northeast corner of said 440.65 acres of land, and an interior corner of this survey;

THENCE: Generally along fence, the recognized South line of said Survey No. 401-1/2, the recognized lower North line of said Survey No. 403, the South line of said 176.50 acres of land, more or less, and the lower North line of said 440.65 acres of land, N 89-54-55 W 369.59 feet to a ½" iron pin found by an 8" diameter cedar corner post for Southwest corner of said 176.50 acres of land, more or less, an interior corner of said 440.65 acres of land, and the upper Southwest corner of this survey;

THENCE: Generally along fence, the upper West line of said 176.50 acres of land, more or less, and the upper East line of said 440.65 acres of land, N 00-20-46 W 810.45 feet to a ½" iron pin found by a corner post for the upper Northeast corner of said 440.65 acres of land, the Southeast corner of that certain 169.0 acres of land described as Tract 5 in a Deed to Texas Parks and Wildlife Department from City of San Antonio, dated September 11, 2014, as recorded in Volume 16866 on Page 1542 of the said Official Public Records, and an angle point of this survey;

THENCE: Generally along fence, the upper West line of said 176.50 acres of land, more or less, and the East line of said 169.0 acres of land, N 00-21-39 W 1601.91 feet to a ½" iron pin found in fence for the Southwest corner of that certain 50 acres of land described as Tract 4 in said Deed to Texas Parks and Wildlife Department, and the Northwest corner of this survey;

THENCE: Along the South line of said 50 acres of land, S 77-49-30 E 2269.36 feet to a ½" iron pin found in fence on the Northwest R.O.W. line of said State Highway 211 and the Southeast line of said 176.50 acres of land, more or less, for the Southeast corner of said 50 acres of land, and the Northeast corner of this survey;

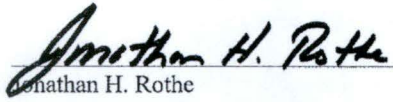
THENCE: Generally along fence, the Northwest R.O.W. line of said F.M. Highway 211, and the Southeast line of said 176.50 acres of land, more or less, S 12-26-57 W 128.23 feet to a 5/8" iron pin set 2.00 feet Southwest of a 2" diameter pipe post, and S 20-48-45 W at 2707.99 feet pass a found TxDot R.O.W. disk, continuing a total distance of 3037.60 feet to the POINT OF BEGINNING.

The bearings are relative to Geodetic North WGS 84 as taken from GPS Observations.

I certify that the foregoing field note description was prepared from an actual survey made under my supervision on the ground and that same is true and correct. Witness my hand and seal this the 27th day of September, 2022.

Attachment II

Mike Hampton, et ux (116.500 Acres) – Page 3


Jonathan H. Rothe

Registered Professional Land Surveyor No. 6286
1705 Avenue K, P.O. Box 426
Hondo, Texas 78861
Ph. (830) 426-3005
Fax (830) 426-8160



ATTACHMENT III

Attachment III

Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before It is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.

STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF BEXAR §

Conservation Easement
HAMPTON PROPERTY

Authorizing Ordinance:	_____
Grantor:	Texas Parks and Wildlife Department
Grantor's Address:	4200 Smith School Road, Austin, TX 78744
Grantee:	City of San Antonio, a Texas municipal corporation
Grantee's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966 (Bexar County) Attn: Director, Parks and Recreation Dept.
Property:	116.5 acres, as more particularly described on Exhibit A.

Grant, Rights, and Obligations

Now, Therefore, in consideration of the premises, the mutual covenants and promises contained herein, \$10 in hand paid, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor grants and conveys to Grantee in perpetuity a Conservation Easement ("Easement") in gross over the Property as of the Effective Date. This Easement is created under and is governed by Chapter 183 of the Texas Natural Resources Code, as amended, or its recodification.

Predicate Facts

Grantor and Grantee worked in collaboration to acquire the Property for perpetual protection of Edwards Aquifer recharge quality and quantity and for expansion of Government Canyon State Natural Area and Grantor owns the Property identified below in fee simple, subject to the Reservations From and Exceptions to Warranty.

The Property sits over the Edwards Aquifer recharge zone, the contributing zone, or both.

Grantor and Grantee both wish to restrict development on the Property in furtherance of protecting indefinitely the quantity and quality of aquifer recharge.

Attachment III

The characteristics of the Property, its current use and state of improvement, are described in the Report (as defined below).

The Report is a complete and accurate description of the Property as of the date of this Easement, establishing the baseline condition of the Property as of the Effective Date and includes reports, maps, photographs, and other documentation;

In inquiring into the condition of the Property as of the date of this Easement, the Report may be augmented but not contradicted by other evidence.

Grantor and Grantee have the common purpose of protecting the natural condition of the Property to further the Purposes of this Easement in perpetuity.

The rights and obligations arising under this Easement are a bargained-for allocation of property rights between Grantor and Grantee.

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Attachment III

1. Basic Information.

Maximum Number of Parcels: One

Maximum Number of Building
Envelopes: One

No-Development Zones: As more particularly described on **Exhibit B**. Structures identified in the Report need not be removed.

Maximum Increased Impervious
Cover: 25,373.7 square feet, which is intended to approximate $\frac{1}{2}$ of one percent of the Property's total acreage, but the square footage controls

Maximum Impervious Cover per
Building Envelope: 25% of the total square feet in the Building Envelope; Increased impervious cover within the Building Envelope shall not exceed the Maximum Increased Impervious Cover for the Property.

Maximum Number of Water
Wells: Two

Report: The Easement Documentation Report dated _____ prepared by Adams Environmental, Inc. relating to the Property, as shown on **Exhibit C**.

Exceptions to and Reservations
from Warranty: As shown on **Exhibit D**. *All items from Schedule B of title policy except rights of parties in possession and shortages in area.*

All exhibits are incorporated into this Easement by reference for all purposes, as if fully set forth.

2. Purpose.

This Easement's purpose ("Purpose") is to minimize the chance of materially impairing the quantity or quality of recharge into the Edwards Aquifer from the Property and, to the extent consistent with quantity and quality of aquifer recharge, protect endangered species and protect and enhance their habitat. In furthering the Purpose, the parties restrict numerous activities on the Property and seek to assure that the Property remains forever in approximately the same natural state in which it now exists, except as otherwise provided. In addition to the specific limitations and requirements of this instrument, Texas Parks and Wildlife Department must at all times use its reasonable best efforts to prevent impairment of quality or quantity of water percolating into the Edwards Aquifer from the Property.

3. Definitions.

3.01. Building Envelope means an area set aside within the Property in which Structures may be built or added. The total area of the Building Envelope may not exceed five acres.

3.02 Feeder means a device that dispenses or otherwise provides food to livestock or wildlife that sits on legs above the surface of the ground.

Attachment III

3.03. Hazardous Materials means (i) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder (including petroleum-based products as described therein); (iii) other petroleum and petroleum-based products; (iv) asbestos in any quantity or form which would subject it to regulation under any Applicable Laws; (v) polychlorinated biphenyls; (vi) any substance, the presence of which on the Property is prohibited by any Applicable Laws; and (vii) any other substance which, by any Applicable Laws, requires special handling in its collection, storage, treatment or disposal. As used herein, "Applicable Laws" means all laws, statutes, ordinances, regulations, and judicial rulings now or hereafter adopted by any governmental authority with jurisdiction over the Property.

3.04. Hunting Blind means a structure of 100 square feet or less used for viewing wildlife or hunting. Blinds may but need not be elevated.

3.05. Impervious Cover means any artificial condition that substantially impedes absorption of water by the soil, including roofs, foundations, parking lots, Roads, and anything else covering or placed above the natural surface of the land. Trailers of all types count as Impervious Cover.

3.06. Maximum Increased Impervious Cover means the maximum amount of the Property to which Impervious Cover may be added after the Effective Date. It does not include Impervious Cover shown in the Report (or replacements thereof).

3.07. No-Development Zone means an area set aside within the Property in which no Roads or other development may occur.

3.08. Road means any route traveled by a motorized vehicle that has been improved through the use of base or other material that would materially impair the recharge capability of the Property. Unimproved trails or paths that do not materially diminish the recharge capability of the Property or paths made by leveling native or indigenous soil and rock do not constitute a Road nor count as Impervious Cover.

3.09. Structure means anything built on the land, excluding fences, Hunting Blinds, and Feeders.

3.10. Temporary Impervious Cover pertain to drilling operations and means cover the operator is required by applicable law to remove on completion of drilling operations.

4. Development-Related Provisions.

4.01. Texas Parks and Wildlife Department must maintain the Property in substantially the same state shown in the Report, except as otherwise provided in this Easement.

4.02. Texas Parks and Wildlife Department must not:

4.02.01. Exceed Maximum Increased Impervious Cover.

Attachment III

4.02.02. Except as otherwise expressly allowed by this Easement, build any Structures, build a Structure higher than three stories, or allow a mobile home, motor home, or travel trailer to be lived in or stored on the Property.

4.02.03. Install, maintain, repair, or replace more than one septic system for each Structure containing plumbing.

4.02.04. Unless City of San Antonio consents in writing, grant new utility or Road easements. City of San Antonio will generally withhold consent except when the easement is granted under threat of condemnation

4.02.05. Except as otherwise provided in this Easement or as reasonably necessary to conduct activities permitted under this Easement, ditch, drain, fill, dig, or otherwise make permanent, substantial topographical changes. Texas Parks and Wildlife Department needs no permission to build stock tanks or other surface water-retention facilities, but stock tanks and other surface water retention facilities not shown in the Report must not exceed two acres each and must not cause the Property to exceed the Maximum Increased Impervious Cover, if the bottom of the facility is impervious. Surface water retention facilities built to facilitate recharge do not count toward the Maximum Increased Impervious Cover.

4.02.06. Drill or allow the existence of more than the Maximum Number of Water Wells on the Property. Water wells drilled by City of San Antonio for monitoring or other City of San Antonio purposes and not used by Texas Parks and Wildlife Department do not count against the Maximum Number of Wells.

4.02.07. Conduct any business activity on the Property that would draw large numbers of people to the Property at any one time or that might, as a reasonably expected incident of its conduct, materially impair the Purpose.

4.03. For so long as the activities are conducted so as not to materially impair the Purpose, Texas Parks and Wildlife Department may:

4.03.01. Reside and entertain guests on the Property.

4.03.02. Maintain, restore, and rebuild Structures.

4.03.03. Continue public use and enjoyment of the Property for hunting, fishing, and recreation, consistently with other applicable express provisions of this Easement.

4.03.04. Allow short-term use of tents outside No-Development Zones. Any use lasting 30 days is not short-term, and once removed, tents cannot be re-erected for at least 90 days. The tents must not cause the Property to exceed the Maximum Increased Impervious Cover.

4.03.05. Engage in all acts and uses that: (i) are permitted by law and (ii) are consistent with the Purpose.

5. Agriculture-Related Provisions.

5.01. Texas Parks and Wildlife Department must not:

Attachment III

5.01.01. Operate a feedlot, poultry farm, or similarly intensive animal operation.

5.01.02. Operate a horticultural nursery.

5.02. For so long as the activities are conducted in such a way as not to materially impair the Purposes of this Easement, Texas Parks and Wildlife Department may:

5.02.01. Graze livestock, but only according to a City of San Antonio-approved plan or a United States Department of Agriculture Natural Resource Conservation Service-approved plan. If the United States Department of Agriculture Natural Resource Conservation Service ceases to exist or ceases to approve such plans, City of San Antonio may designate an alternative, similarly qualified authority to review and approve livestock plans.

5.02.02. Hunt and fish on the Property, lease the Property for hunting and fishing, and provide guided and unguided hunts and fishing.

5.02.03. Construct or install fences, Hunting Blinds, and Feeders, even in No-Development Zones.

5.02.04. Permit other outdoor recreation on the Property. In connection with recreation, Texas Parks and Wildlife Department may install composting toilets on the Property, but if it does so, Texas Parks and Wildlife Department must properly maintain them.

5.02.05. Foster the presence of wildlife on the Property.

5.02.08. Control brush according to a United States Department of Agriculture Natural Resource Conservation Service-approved plan or City of San Antonio-approved plan. If the United States Department of Agriculture Natural Resource Conservation Service ceases to exist or ceases to approve such plans, City of San Antonio may designate an alternative, similarly qualified authority to review and approve brush control plans.

6. Vegetation-Related Provisions.

6.01. Texas Parks and Wildlife Department must not cut or remove vegetation, except Texas Parks and Wildlife Department may, without restriction, cut firebreaks up to 15 feet wide and cut and remove diseased or exotic vegetation or vegetation so damaged by natural forces as to be unable to survive. Texas Parks and Wildlife Department may further cut and remove native vegetation to further the Purpose and as may be reasonably necessary to conduct activities permitted under this Easement, but in so doing, it must minimize erosion and must not otherwise materially impair the Purpose.

6.02. Texas Parks and Wildlife Department must not plant exotic vegetation on the Property.

6.03. Texas Parks and Wildlife Department must not plow or use fertilizers.

Attachment III

7. Vehicle-Related Provisions.

7.01 Authorized representatives of Texas Parks and Wildlife Department and City of San Antonio may use motorized vehicles anywhere on the Property in furtherance of their responsibilities under this Easement and as reasonably necessary for Texas Parks and Wildlife Department's park and wildlife management operations, ecotourism, educational programs and maintenance of the Property. No such use may materially impair the Purpose.

7.02 In no event may the Property be used for off-road recreational or rally purposes for any motorized vehicles. This restriction includes, but is not limited to: cars, trucks, motor-bikes, motorcycles and ATV's.

8. Storage, Dumping, and Disposition-Related Provisions.

Texas Parks and Wildlife Department must not:

8.01. Store chemicals (except those for activities permitted under this Easement) that, if leaked, would materially degrade surface or subsurface water quality.

8.02. Dump trash, rubbish, or other waste, except short-term storage of material accumulated in the course of conducting activities permitted under this Easement. All such materials must be removed from the Property not less often than annually, and no such materials may leak chemicals into or otherwise pose a material degradation threat to the quality of water entering the Edwards Aquifer. Texas Parks and Wildlife Department may burn trash in a container, but Texas Parks and Wildlife Department must not permit the residue from the fire to be dumped on the soil. All such residue must be contained until it is removed from the Property.

8.03. Generate, store, collect, transport, dispose, dump, or release hazardous waste or materials, in whatever form, or install or permit underground storage tanks on the Property.

8.04. Store, use, or apply herbicides, biocides, pesticides, fertilizers, insecticides, fungicides, rodenticides, or any similar chemicals or agents, except for (A) household use or (B) use of chemicals, including fertilizers, on a list approved by City of San Antonio, as the list may be changed from time to time. City of San Antonio's list may impose time, quantity, and use restrictions. While the City of San Antonio is the City of San Antonio, the City Manager may alter the list without further action or authorization by City Council. Texas Parks and Wildlife Department's use of such chemicals must conform to then current best practices, and Texas Parks and Wildlife Department must not allow permitted materials to leak into or otherwise pose a material degradation threat to the quality of water in the Edwards Aquifer. Texas Parks and Wildlife Department must indemnify City of San Antonio from all loss, cost, liability, or expense arising from Texas Parks and Wildlife Department's use of such chemicals, with or without City of San Antonio's permission.

9. Extraction-Related Provisions.

9.01. Texas Parks and Wildlife Department must not:

9.01.01. Use the surface for any activity related to extracting hydrocarbons or other minerals on or below the surface, including storing hydrocarbons or other minerals. Minerals include not only hydrocarbons but also coal, lignite, uranium, ore, and any other substance that may be removed from the earth.

Attachment III

9.01.02. Remove topsoil or remove or mine sand, gravel, rock, or other materials. Notwithstanding any other provision of this Conservation Easement to the contrary, soil, sand, caliche, gravel or rock may be removed from the surface of the Property so long as such removal: (i) is solely for use on the Property for non-commercial purposes, (ii) is in conjunction with activities permitted herein, (iii) is accomplished in a manner which does not materially impair the Purpose, (iv) is limited to no more than two (2) one-acre removal sites on the Property at any one time, with no more than ten (10) such sites ever created unless otherwise approved by City of San Antonio, and (v) that any area so disturbed is restored and replanted as appropriate with native vegetation at the conclusion of the removal activity and prior to the creation of any new removal site if a new removal site will exceed the limit of no more than 2 such sites at any one time. Any activity permitted under this paragraph shall be undertaken and this provision shall be interpreted in a manner consistent with Sec. 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto. Texas Parks and Wildlife Department may also permit archaeological digs supervised by qualified personnel.

9.01.03. Deplete, or extract surface or subsurface water, transfer surface or subsurface water rights for use off the Property, or otherwise to use water or water rights other than in direct support of activities Texas Parks and Wildlife Department may, consistently with this Easement, otherwise engage in on the Property.

9.01.04. Sever from surface ownership of the Property the ownership of previously unsevered minerals or convey to another that is not bound by this Easement any severed mineral interest.

9.02. No party to this Easement may hereafter exploit any severed or unsevered minerals pertinent to the Property. Neither may any party hereto convey any mineral interest or executive right in minerals to another not bound by this Easement. This clause does not prevent a party to this Easement from accepting royalties, bonuses, delay rentals, or other sums due to the party from another with a previously existing right to exploit the minerals.

9.03. Even if all or part of the minerals are, as of the date this Easement, owned by someone not a party to this Easement, by this Easement, the City of San Antonio reserves the right, to be held jointly with Texas Parks and Wildlife Department, to consent or not to any matter as to which Texas Parks and Wildlife Department's sole consent would otherwise be required. Texas Parks and Wildlife Department's and City of San Antonio's joint right to consent is such that neither can consent without the joinder of the other.

9.04. Both parties acknowledge the restrictions on alienation and other provisions in this Section are reasonable, because mineral exploitation poses a risk to recharge into the Edwards Aquifer.

10. Water Flow-Related Provisions.

Texas Parks and Wildlife Department must not:

10.01. Alter natural water courses, lakes, ponds, marshes, or other water bodies, subject to Texas Parks and Wildlife Department's right to have stock tanks and other surface-water retention facilities, except for maintenance of permitted Roads.

Attachment III

10.02. Pollute the soil or surface or subsurface water or otherwise engage in activities materially detrimental to water purity or that could materially alter the natural water level or flow in or over the Property. This does not impair the right to use the wells permitted under this Easement for the purposes permitted under this Easement.

10.03. Otherwise, materially and adversely affect the quantity and quality of recharge percolating into the Edwards Aquifer from the Property.

11. Requests for Approval.

11.01. When City of San Antonio's consent is needed for any purpose under this Easement, Texas Parks and Wildlife Department must submit all such requests to City of San Antonio in writing. The requests must set out all detail reasonably required by City of San Antonio, including plans, specifications, and designs where appropriate. The request must include a timetable sufficiently detailed to permit City of San Antonio to monitor progress. Texas Parks and Wildlife Department must not make changes or take action for which City of San Antonio's approval is required, unless expressly authorized in writing by City of San Antonio.

11.02. City of San Antonio may consult with governmental agencies, nonprofit preservation and conservation organizations, and other advisors concerning appropriateness of any activity proposed under this Easement.

11.03. City of San Antonio may exercise its approval rights in its reasonable discretion. City of San Antonio must respond to a request by Texas Parks and Wildlife Department within 60 days of its receipt of the request. City of San Antonio's failure to respond timely is not approval of Texas Parks and Wildlife Department's request, but City of San Antonio must not unreasonably withhold, condition, or delay its approval.

11.04. If Texas Parks and Wildlife Department does not begin approved actions within one year, the approval is void. Texas Parks and Wildlife Department may resubmit the request, but previous approval does not estop City of San Antonio from denying approval on resubmission.

11.05. If City of San Antonio is the City of San Antonio, in any case in which City of San Antonio's consent or agreement is required under this Easement, other than for an amendment of this Easement, the consent or agreement may be given by the City Manager or the Manager's designee without authorization of City Council. The Manager's delegation of authority to a designee must be in writing. City of San Antonio is not estopped by the actions of anyone to whom the Manager's authority has not been delegated in writing. If the City of San Antonio no longer has a City Manager, the governing body of the City may designate an officer to give consents and agreements called for under this Easement. City Council's approval of this Easement is approval of the delegation of authority to the City Manager contained in this paragraph.

12. Ownership Obligations.

City of San Antonio has no responsibility to Texas Parks and Wildlife Department to maintain any part of the Property, except for improvements, if any, installed by City of San Antonio.

Attachment III

13. City of San Antonio's Rights.

13.01. In addition to other rights necessarily incident to City of San Antonio's ability to further the Purpose of this Easement, City of San Antonio has the following rights regarding the Property:

13.01.01. The right to monitor (A) the hydrology of the Edwards Aquifer and other water or geologic formations below (B) the presence of endangered species and the quantity and quality of their habitat on the Property, subject, however, to the entry requirements set out below.

13.01.02. The right to enter the Property to inspect to determine compliance with this Easement. If City of San Antonio finds a potential violation of this Easement, City of San Antonio may enter the Property as much as necessary to monitor the status of the problem, obtain evidence for enforcement, or correct the problem at Texas Parks and Wildlife Department's expense. In so doing, City of San Antonio must not interfere unreasonably with Texas Parks and Wildlife Department's permitted uses of the Property.

13.01.03. The right to install, operate, and maintain Purpose-related monitoring equipment, including a continuous recording rain gauge at locations that do not unreasonably interfere with Texas Parks and Wildlife Department's activities otherwise permitted under this Easement. City of San Antonio may install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring equipment.

13.01.04. The right to drill, operate, and maintain monitoring wells that do not interfere unreasonably with Texas Parks and Wildlife Department's permitted uses of the Property. City of San Antonio may install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring wells.

13.01.05. The right to conduct research activities with appropriate research entities related to watershed management, water quality protection, or other similar purposes consistent with the Purposes of this Easement. City of San Antonio may also use the Property for educational purposes, including field trips related to natural science education, but not more often than once annually. City of San Antonio must coordinate all such activities with the Texas Parks and Wildlife Department, and City of San Antonio's right to conduct such activities are subject to Texas Parks and Wildlife Department's approval, which must not be unreasonably withheld.

13.01.06. The right to review and approve plans of the Texas Parks and Wildlife Department involving caves and other sensitive hydrogeologic features on the Property.

13.01.07. The right to construct, operate, and maintain at mutually agreed locations one or more recharge structures and associated facilities that do not unreasonably interfere with Texas Parks and Wildlife Department's permitted uses of the Property.

13.02. City of San Antonio is responsible for maintenance of areas fenced by it, for equipment, structures or facilities it places on the Property, and for any contractor or individuals entering the Property pursuant to or in connection with City of San Antonio's rights under this Easement. Except as expressly provided to the contrary, no approval or consent required under this Section may be unreasonably withheld, conditioned, or delayed.

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13.03. None of the enumerated rights imposes a duty on City of San Antonio to exercise the right.

13.04. Texas Parks and Wildlife Department is responsible for remedying violations of this Easement, but City of San Antonio has the right to prevent and correct violations through any means available at law or in equity, including injunction. If City of San Antonio finds a violation, it may, at its discretion, take appropriate legal action or, at Texas Parks and Wildlife Department's expense, eliminate or ameliorate any material, continuing violation of this Easement, including any artificial condition that may materially impair the Purpose. Except when an ongoing or imminent violation might substantially diminish or impair the Purpose, City of San Antonio must give Texas Parks and Wildlife Department 20-days' prior written notice before initiating action. If a violation cannot reasonably be corrected within 20 days, City of San Antonio may allow Texas Parks and Wildlife Department a longer period that is reasonably necessary under the circumstances to correct the violation. In such case, Texas Parks and Wildlife Department must begin corrective action with the 20 days and thereafter diligently and continuously pursue complete correction in good faith. Nothing in this Easement requires Texas Parks and Wildlife Department to restore the Property after any act of God or other event over which Grantor had no control, but Grantor must permit City of San Antonio to correct conditions caused by such events that impair quantity or quality of recharge. In so doing, City of San Antonio must not interfere unreasonably with Grantor's permitted uses of the Property.

13.05. Grantor acknowledges that, once pollution enters the Edwards Aquifer or endangered species are lost, it may be impossible to undo the damage. Likewise, both endangered species and (B) surface water that might otherwise percolate into the aquifer, but that Texas Parks and Wildlife Department wrongfully allows to run off, is irreplaceable. Further, loss of endangered species, the Property, and the Edwards Aquifer as natural phenomena cannot be compensated adequately by damages. Accordingly, the parties acknowledge that, in the case of a material, uncorrected violation of this Easement, City of San Antonio has no adequate remedy at law. In such case, equitable relief generally and an injunction specifically are appropriate remedies.

13.06. City of San Antonio has the right to recover all costs and expenses, including court costs and reasonable attorneys fees, incurred enforcing this Easement.

13.07. City of San Antonio's remedies are cumulative. Its exercise of one remedy is not an election of remedies and does not waive or limit other remedies. Failure to exercise a remedy on one or more occasions does not waive or limit use of the remedy on other occasions.

13.08. City of San Antonio has discretion whether and how to enforce this Easement. City of San Antonio's delay in or forbearance from exercising rights under this Easement does not waive the rights the exercise of which is delayed or forborne.

14. Alienation by City of San Antonio.

14.01. This Easement is in gross and is freely alienable by City of San Antonio, subject to the following conditions:

14.01.01. The transferee must be both a "holder" under Section 183.001 of the Texas Natural Resources Code (as the same may be amended from time-to-time) and also a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code.

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14.01.02. The transferee must expressly assume the responsibilities of the City of San Antonio under this Easement.

14.02. If City of San Antonio ceases to exist or no longer qualifies as a holder under applicable law, the Easement continues. On application by Texas Parks and Wildlife Department or City of San Antonio, a court of competent jurisdiction must transfer City of San Antonio's rights under this Easement to a qualified organization having similar purposes that agrees to assume the responsibility. If more than one qualified entity competes for the role, the court should select the entity that, in the court's judgment, is best suited to assure accomplishment of the Purposes.

15. Amendment.

This Easement may be amended only with the written consent of both Texas Parks and Wildlife Department and City of San Antonio. Any amendment must be consistent with the Purposes of this Easement and must comply with applicable law, including Sec. 170(h) of the Internal Revenue Code, as amended from time-to-time, and with Chapter 183 of the Texas Natural Resources Code, as amended from time-to-time. If the City of San Antonio is the City of San Antonio, its consent to an amendment must be authorized by City Council or a successor governing body.

16. Termination, Condemnation.

16.01. The Easement may be terminated by judicial declaration if condemnation or a change in conditions on or around the Property renders it impossible to substantially fulfill the Purposes of this Easement.

16.02. City of San Antonio's interest is a compensable property right. If some or all of the Property is condemned or sold in lieu of condemnation, Texas Parks and Wildlife Department and City of San Antonio will divide the condemnation proceeds as follows: Texas Parks and Wildlife Department receives a share equal to the entire award multiplied times a fraction, the numerator of which is the value of the Property burdened by the Easement and the denominator of which is the value of the Property unburdened by the Easement; City of San Antonio receives the rest of the award. Values are measured at the time of condemnation.

17. Interpretation.

This Easement is to be interpreted under the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions to give maximum effect to its Purposes, without regard to which party was the drafter. This Easement was fully negotiated, and no presumption exists against either party. Nothing in this Easement excuses Texas Parks and Wildlife Department from compliance with any applicable law, rule, ordinance, or regulation.

18. Severability.

If any part of this agreement is found invalid or unenforceable, the finding does not affect the remainder.

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19. Successor, Beneficiaries.

This Easement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. No third party has the right to enforce any part of this Easement.

20. Encumbrance by Texas Parks and Wildlife Department.

Texas Parks and Wildlife Department may encumber the Property (including consensual liens) after the effective date of this Easement, but all such encumbrances are subordinate to this Easement.

21. Appropriations.

All obligations of the City of San Antonio under this Easement are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year.

22. Notices from Governmental Authorities.

Texas Parks and Wildlife Department must deliver to City of San Antonio copies of any notice of violation or lien relating to the Property received by Texas Parks and Wildlife Department from any government authority within five (5) days of receipt. Upon request by City of San Antonio, Texas Parks and Wildlife Department must promptly furnish City of San Antonio with evidence of Texas Parks and Wildlife Department's compliance with the notice or lien, if compliance is required by law.

23. Easement Runs with the Land; No Merger.

This Easement continues in perpetuity. This Easement survives unity of ownership of the fee and the Easement.

24. Vacancies, Excesses, Other Matters.

This Easement covers all the following interests, collectively called "Excess Lands: (1) all interest, if any, in excess lands or vacancies (within the meaning of subchapters E and F of Chapter 51 of the Texas Natural Resources Code) presently held or later acquired by Grantee; (2) all interest in strips or gores between the Property and abutting properties and acreage in adjoining surveys to which predecessors in title have superior right; (3) any land lying in or under the bed of any road or highway, opened or proposed, abutting or adjacent to the Property; (4) any land lying in or under the bed of any creek, stream, or river, if any, running through or abutting or adjacent to the Property; and (5) all interests in real property within the boundaries of this Easement, title to which is later acquired by Grantee.

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In Witness Whereof, the parties have caused their representatives to set their hands. By the signature of its representative below, Grantee manifests its acceptance of this Easement.

Grantor:

Texas Parks and Wildlife Department, a
Texas state agency

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Grantee:

City of San Antonio, a Texas municipal
corporation

Signature: _____

Printed
Name: _____

Title: _____

Date: _____

Approved as to Form:

City Attorney

STATE OF TEXAS §

COUNTY OF _____ §

This Easement was acknowledged this date before me by _____,
_____ of the Texas Parks and Wildlife Department, a Texas state agency, in the capacity
therein stated and on behalf of such entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____

Attachment III

STATE OF TEXAS §

COUNTY OF _____ §

This Easement was acknowledged before me this date by Phillip Covington, Special Projects Manager of the City of San Antonio, a Texas municipal corporation, in the capacity therein stated and on behalf of such entity.

Date: _____

Notary Public, State of Texas

My Commission expires: _____