

ORDINANCE 2022-06-16-0445

APPROVING THE SETTLEMENT OF A LAWSUIT STYLED TAP PILAM COAHUILTECAN NATION, ET AL. V. ALAMO TRUST, INC., ET AL., CAUSE NO. 5:19-CV-1084; TAP PILAM, COAHUILTECAN NATION, ET AL. V. DOUGLASS W. MCDONALD, CEO OF THE ALAMO TRUST, ET AL., CAUSE NO. 20-50908; AND TAP PILAM COAHUILTECAN NATION, ET AL. V. ALAMO TRUST, INC., ET.AL., CAUSE NO. D-1-GN-20-005131 IN THE 98TH DISTRICT COURT, TRAVIS COUNTY, TEXAS RELATED TO SPECIFIC TERMS AS THEY PERTAIN TO THE CITY FOR THE ALAMO PLAN, ALAMO PLAZA, AND ALAMO COMPLEX.

* * * * *

WHEREAS, the Tap Pilam Coahuiltecan Nation ("TPCN") San Antonio Mission Cemetery Association ("SAMCA") and Raymond Hernandez brought claims against the City and Alamo Trust, Inc. relating to the Alamo Plan; and

WHEREAS, the City owns Alamo Plaza and entered into a Lease Agreement, a Cooperative Agreement, and an Amended and Restated Ground Lease and Management Agreement for Alamo Plaza with the GLO to oversee and manage the property in Alamo Plaza including the Cenotaph for the Alamo Plan; and

WHEREAS, the parties have been communicating and working together to find an amicable resolution to the claims and these efforts have resulted in a proposed settlement agreement between the parties; and


WHEREAS, although the City of San Antonio has vigorously contested this matter, the matter is pending in the 98th District Court, Travis County, Texas as well as an ongoing Appeal with the 5th Circuit Court of Appeals; and

WHEREAS, it is in the City's best interest to settle this matter to avoid the uncertainties and risks associated with further litigation as it pertains to the Alamo Plan, Alamo Complex, and the area owned by the City in Alamo Plaza; and

WHEREAS, the parties have reached an agreement to settle the claims as noted in Section 5 of the Settlement Agreement and Mutual Release ("Agreement") in exchange for a full release and dismissal with prejudice except as any noted in the Agreement, **NOW THEREFORE:**

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

PASSED AND APPROVED this 16th day of June, 2022.


For Andrew Segovia, City Attorney



City of San Antonio

City Council A Session Meeting June 16, 2022

16.

2022-06-16-0445

Ordinance approving the settlement of litigation by the Tap Pilam Coahuiltecan Nation; San Antonio Mission Cemetery Association; and Raymond Hernandez against the City of San Antonio and Alamo Trust Inc., relating to the Alamo Plan. [Andrew Segovia, City Attorney]

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, Courage, Perry
No:	Pelaez
Absent:	Sandoval

EXHIBIT “A”

Settlement Agreement and Mutual Release

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is entered into as of the Effective Date as defined below, by and among: (1) Alamo Trust, Inc. ("Alamo Trust" or "Defendant"); (2) City of San Antonio ("COSA" or "Defendant") (2) Coahuiltecan Nation ("TPCN"); (3) San Antonio Mission Cemetery Association ("SAMCA"); and (4) Raymond Hernandez (together with TPCN and San Antonio Mission Cemetery Association, the "Plaintiffs"). Alamo Trust and Plaintiffs are referred to collectively as the "Parties," or each individually as a "Party."

WHEREAS, in order to avoid the continued cost and uncertainty of litigation, the Parties have agreed to resolve their current disputes arising in the following cases:

1. Tap Pilam Coahuiltecan Nation, et al. v. Alamo Trust, Inc., et al., No. 5:19-cv-1084, filed in the United States District Court for the Western District of Texas (the "Western District Litigation"),
2. Tap Pilam, Coahuiltecan Nation, et al. v. Douglass W. McDonald, CEO of the Alamo Trust, et al., Cause No. 20-50908 pending in the 5th Circuit Court of Appeals (the "5th Circuit Appeal"); and
3. Tap Pilam Coahuiltecan Nation, et al. v. Alamo Trust, Inc., Cause No. D-1-GN-20-005131 in filed in the 98th District Court, Travis County, Texas (the "State Court Litigation") (collectively, Western District Litigation, 5th Circuit Appeal, and State Court Litigation are referred to as the "Alamo Litigation");

NOW, THEREFORE, the Parties agree as follows:

1. **Recitals.** The above recitals are incorporated into and made part of this Settlement Agreement.

2. **Effective Date.** This Settlement Agreement shall take effect once all Parties have signed the Settlement Agreement, and as of the date of execution by the last Party to sign the Settlement Agreement (the "Effective Date").

3. **Plaintiffs' Releases.** In consideration of the mutual promises contained in this Settlement Agreement, Plaintiffs hereby fully, completely, irrevocably, finally, and unconditionally release, acquit, settle, compromise, waive, forever discharge, and hold harmless Alamo Trust and each of its affiliates, predecessors, successors, assigns, principles, past or present employees, past or present directors, past or present officers, attorneys, insurers, reinsurers, and agents, including, but not limited to, Douglass W. McDonald (the "Alamo Trust Releasees") and the Texas General Land Office (the "GLO") and each of its affiliates, predecessors, successors, assigns, principles, past or present employees, past or present commissioners or directors, past or present officers, attorneys, insurers, reinsurers, and agents, including, but not limited to, Commissioner George P. Bush (the "GLO Releasees"); and COSA and each of its affiliates, predecessors, successors, assigns, past or present employees, past or present directors, past or present officials, attorneys, insurers, and agents from any and all past present or future claims, demands, requests, suits, notices, obligations, actions, causes

of action, damages, judgments, losses or liabilities of any nature whatsoever, whether based on contract, tort, statute, law, equity, or any other theory of recovery, of whatever kind or character, whether known or unknown, direct or derivate, fixed or contingent, asserted or unasserted, accrued or not, including without limitation, claims Plaintiffs have had, now have, or may have in the future against the Alamo Trust Releasees, the GLO Releasees, and COSA Releasees that relate to or arise out of the allegations made and causes of action asserted in the Alamo Litigation.

4. **Defendant's Releases.** In consideration of the mutual promises contained in this Settlement Agreement, Defendants hereby fully, completely, irrevocably, finally, and unconditionally release, acquit, settle, compromise, waive, forever discharge, and hold harmless Tāp Pīlam Coahuiltecan Nation and each of its affiliates, predecessors, successors, assigns, principles, past or present employees, past or present directors, past or present officers, past or present tribal council members, attorneys, insurers, reinsurers, and agents, including, but not limited to, Raymond Hernandez (the "TPCN Releasees") and the San Antonio Missions Cemetery Association and each of its affiliates, predecessors, successors, assigns, principles, past or present employees, past or present commissioners or directors, past or present officers, attorneys, insurers, reinsurers, and agents (the "SAMCA Releasees") from any and all past or present claims, demands, requests, suits, notices, obligations, actions, causes of action, damages, judgments, losses or liabilities of any nature whatsoever, whether based on contract, tort, statute, law, equity, or any other theory of recovery, of whatever kind or character, whether known or unknown, direct or derivate, fixed or contingent, asserted or unasserted, accrued or not, including without limitation, claims Plaintiffs have had, now have, or may have in the future against the TPCN Releasees and the SAMCA Releasees that relate to or arise out of the allegations made and causes of action asserted in the Alamo Litigation.

5. **Parties' Agreements.** In consideration of the covenants and releases made above, the sufficiency of which is hereby acknowledged by all Parties, the Parties agree to the following:

- a) **Extended Public Visiting Hours.** Alamo Trust agrees to extend the visiting hours for the general public on the second Saturday of September. The Alamo Rangers will be present on the property during the extended hours to ensure there is no harassment or public spectacle.
- b) **Memorandum of Understanding Between ATI and TPCN.** Alamo Trust entered into a Memorandum of Understanding (the "MOU") with TPCN to establish a working relationship with TPCN. The MOU includes a procedure for future dispute resolutions. A copy of the MOU is attached to this Settlement Agreement as Exhibit A.
- c) **Alamo Mission Archaeology Advisory Committee Meetings.** Alamo Trust will invite TPCN to attend all Alamo Mission Archaeology Advisory Committee ("AMAAC") meetings so that TPCN can provide input and will evaluate other opportunities to ensure TPCN's input is considered.
- d) **Museum Planning Committee.** Alamo Trust will increase the size of the Museum Planning Committee by one person and will accept the recommendation of TPCN. All Museum Planning Committee members will be subject to a confidentiality agreement, a copy of which is attached to this

Settlement Agreement as Exhibit B.

- e) **Presentation to Museum Planning Committee.** TPCN may make a presentation to the Museum Planning Committee concerning burials on Alamo grounds.
- f) **Reinternment of Human Remains.** Alamo Trust agrees that any human remains discovered during the Alamo Plan will be reinterred on Alamo grounds.
- g) **Statues and Monuments.** Alamo Trust will refer TPCN's request for statues/monuments of the indigenous Mission governors to the Museum Planning Committee.
- h) **Plaque or Monument.** Alamo Trust will refer TPCN's request for a plaque or monument naming all persons known to be buried at the Alamo to the Museum Planning Committee.
- i) **The Archaeological Report.** The Archaeological Report is not yet complete. Once complete, it becomes a public document and Alamo Trust agrees to release it.
- j) **The Human Remains Protocol.** There is an existing human remains protocol that allows the AMAAC to determine the reburial protocol. Pursuant to Paragraph C of this Section, Alamo Trust agrees to invite TPCN to attend all AMAAC meetings to provide input.
- k) **Date Human Remains Will Be Reinterred.** Alamo Trust agrees not to reinter human remains found on the project until after September 1, 2023.
- l) **Memorandum of Understanding Between COSA and TPCN.** The City of San Antonio and TPCN agree to meet within (60) days of the signing of this agreement to enter into discussions regarding a possible Memorandum of Understanding (MOU) between the two.

6. **Dismissal of the 5th Circuit Appeal.** Within fourteen (14) business days following the Effective Date, Plaintiffs agree to file a Motion to Dismiss the Appeal against all Defendants, including the GLO Releasees, with Prejudice, as approved by the Parties.

7. **Dismissal of the State Court Litigation.** Within fourteen (14) business days following the Effective Date, Plaintiffs agree to file a Motion to Dismiss all claims against all Defendants, including the GLO Releasees, with Prejudice in the State Court Litigation, as approved by the Parties.

8. **Unknown Claims.** The Parties acknowledge that (a) each Party respectively has sustained or may have sustained damages, losses, fees, costs, or expenses arising out of the Alamo Plan or the Alamo Litigation that are presently unknown or unsuspected; (b) this Settlement Agreement has been negotiated and agreed upon in light of such damages, losses, fees, costs, or expenses; and (c) the Parties shall have no obligation except as set forth in this Settlement Agreement for such damages, losses, fees, costs, or expenses. Accordingly, to the extent that any law of the United States, or of any state, may be construed to provide that a general release does not extend to rights or claims that a Party does not know or expect to exist in its favor at the time of executing the release arising out of the Alamo Plan or the Alamo Litigation, which if known to the Party may have materially affected the settlement, each of the Parties hereby waives the benefit of any such laws.

9. **No Admission of Liability.** The Parties acknowledge that this Settlement Agreement is made in compromise and settlement of the matters addressed herein and shall not be construed or interpreted as an admission or acknowledgement of liability, any and all such liability having been strictly denied.

10. **Communications with the Media.** The Parties expressly acknowledge and agree to the following:

- a) **Joint Statement.** The Plaintiffs and Alamo Trust agree to issue a joint statement regarding resolution of the Alamo Litigation and this Settlement Agreement (the "Joint Statement Regarding Resolution"), which is set forth in Exhibit C of this Settlement Agreement, in response to any media inquiries regarding the Alamo Litigation and/or this Settlement Agreement. The Plaintiffs and Alamo Trust further agree that the Joint Statement Regarding Resolution and this Settlement Agreement are the only statements that can be issued to the media concerning the Alamo Litigation and Settlement Agreement. COSA may issue separate statement(s).
- b) **Third-Party Sources.** The Plaintiffs and Alamo Trust, or their agents, shall not make any comment, give any interview, or issue a press release or other public announcement of any kind to any third-party source beyond the Joint Statement Regarding Resolution and this Settlement Agreement regarding the Alamo Litigation and Settlement Agreement, except to the extent necessary for COSA and its representatives to discuss the terms of this Settlement Agreement with appropriate COSA City Council members and COSA staff in order to obtain approval of this Settlement Agreement.
- c) **Breach of the Agreement.** The Alamo Trust, Plaintiffs and their Counsel further agree that any comment, interview, press release, or other public announcement beyond the Joint Statement Regarding Resolution and the Settlement Agreement itself, will constitute a material breach of this Agreement. In that event, the non-breaching party will have the option to terminate the Agreement, upon which the Agreement will immediately become null and void, with the breaching party forfeiting all benefits and potential recourse thereunder.

11. **No Assignment.** Each Party represents and warrants that it has not assigned, sold, transferred, or otherwise disposed of any of the rights, causes of action, claims, or other matters that are being released in this Settlement Agreement.

12. **Entire Agreement.** This Settlement Agreement sets forth the entire agreement of the Parties regarding the matters addressed herein. This Settlement Agreement supersedes any prior agreements or understandings between the Parties relating to the subject matter of this Settlement Agreement. The Parties are not relying upon any statement, representation, promise, inducement, or other matter not expressly set forth in this Settlement Agreement, and the Parties expressly waive any claims of fraudulent inducement or reliance.

13. **Choice of Law and Forum.** This Settlement Agreement shall be governed by the procedural and substantive laws of the State of Texas regardless of any choice of law principles. Any disputes arising out of or relating to this Settlement Agreement shall be filed with a court of competent jurisdiction in Texas.

14. **Attorneys' Fees.** If court action becomes necessary to enforce any provision of this Settlement Agreement, the Party who substantially prevails shall be entitled to an award of reasonable attorneys' fees.

15. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

16. **Severability.** If any term or provision of this Settlement Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Settlement Agreement shall not be affected thereby, and each of the terms and provisions of this Settlement Agreement shall be valid and enforced to the fullest extent permitted by law.

17. **Authority.** Each person signing this Settlement Agreement represents and warrants that he or she is duly authorized and empowered to execute this Settlement Agreement and bind the Parties for which he or she signed this Settlement Agreement. Each Party represents and warrants to the extent applicable: (a) that it has taken all necessary corporate, legal, and administrative acts necessary to execute this Settlement Agreement; (b) that the making and performance of this Settlement Agreement will not violate any provision of the Parties' respective articles of incorporation, charter, corporate by-laws, or other binding document; and (c) that it has the authority to make the releases set forth therein.

18. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. Scanned or copied signatures are sufficient to bind the parties.

19. **Construction of Settlement Agreement.** This Settlement Agreement will not be construed against the Party or Parties preparing it, but it will be construed as if all Parties had prepared it.

20. **Miscellaneous Provisions.** Each Party acknowledges that he, she, or it has been given the opportunity to consult with an attorney and to consider the terms of this Agreement and that he, she, or it has read, understands, and agrees to such terms. This Settlement Agreement cannot be modified unless the modification is in writing and signed by the Parties. The captions or section headings in this Settlement Agreement are for convenience of reference only and shall not be considered in the interpretation of this Settlement Agreement.

SIGNATURE

Plaintiffs

Name: Tāp Pīlam Coahuiltecan Nation

Signature:

Raymond Hernandez

Title:

Tribal Council Member

Date:

05/30/2022

Signature:

Ramon Valdez Sanchez

Title:

Tribal Council Member

Date:

05/30/2022

Signature:

Michael Killian

Title:

Tribal Council Member

Date:

05/30/2022

Signature:

Linda Yildenes


Title:

Tribal Council Member

Date:

05/30/2022

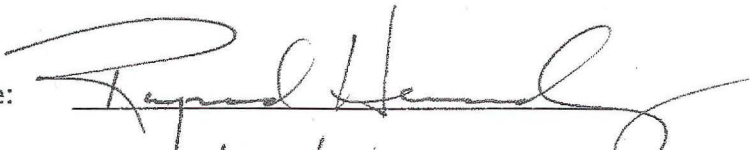
Name: San Antonio Mission Cemetery Association

Signature: 

Title: Board member

Date: 05/30/2022

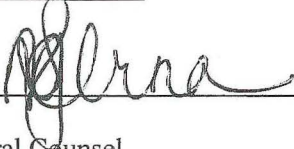
Name: Raymond Hernandez

Signature: 

Date: 05/30/2022

Defendant

Name: Alamo Trust, Inc.

Signature: 

Title: General Counsel

Date: 5/31/2022

Defendant

Name: City of San Antonio

Signature: _____

Title: _____

Date: _____

EXHIBIT “A”

**Attachment to Settlement Agreement
and Mutual Release**

MEMORANDUM OF UNDERSTANDING

Between

Alamo Trust, Inc.

and

Tāp Pilam Coahuiltecan Nation

This Memorandum of Understanding (MOU) sets forth the terms and understanding between Alamo Trust, Inc. ("ATI"), a Texas nonprofit corporation headquartered at 321 Alamo Plaza, Suite 300, San Antonio, TX 78205, and the Tāp Pilam Coahuiltecan Nation ("TPCN"), a tribal community of American Indians headquartered at 1313 Guadalupe St., Suite 204, San Antonio, Texas, to form a Community Partnership. ATI and TPCN are referred to collectively as the "Parties" or each individually as a "Party."

In recognition of the past issues between the Parties, this agreement is designed to facilitate a process to deal appropriately and in a culturally-sensitive way with any concerns or disagreements between the Parties that exist now or may exist in the future. To that end, to the extent that there are any concerns or disagreements, the Parties agree that they will raise those concerns or disagreements with the points of contact listed below.

I. BACKGROUND

In 2011, the Texas Legislature and Governor Rick Perry designated the Texas General Land Office (the "GLO") the custodian of the Alamo. Pursuant to a management agreement between ATI and the GLO, ATI is responsible for the management and operations of the Alamo grounds and historic structures, including developing educational programs for visitors.

TPCN are descendants of the aboriginal people who populated all the San Antonio Missions, South Texas and Northeast Mexico, who have dedicated themselves to the preservation and protection of the camposantos, culture, language, and traditions, of the indigenous Coahuiltecan people, and to include others who integrated and resided in the Native American missions.

II. PURPOSE

Together, ATI and TPCN enter into this voluntary MOU to mutually promote the preservation of Mission San Antonio de Valero ("the Alamo"), to bring its unique story to life, to inspire visitors and honor all those who lived, fought, and died there; and to promote the preservation and protection of the culture and traditions of all indigenous people who resided in Mission San Antonio de Valero.

III. DURATION

This MOU becomes effective on the date that the MOU is fully executed by all necessary Parties and returned to the other Parties (the "Effective Date"). The MOU will continue from the Effective Date until superseded by a subsequent MOU or agreement, or until either party provides the other written notice of its intent to withdraw from the MOU two months prior to termination of the MOU.

IV. RESPONSIBILITIES

1. **Appointees Under this MOU:** The Parties will each appoint a person to serve as the official point of contact for the other Party and coordinate the activities of their respective departments in carrying out this MOU. The initial appointees of the Parties are:

ATI: Kate Rogers, Executive Director
Executive Director
Alamo Trust, Inc.
(210) 293.6000
krogers@thealamo.org

TPCN: Linda Ximenes
500 6th St. #205
San Antonio, Texas, 78215
210-872-5928
Lindax1944@icloud.com

2. **Cultural Orientation:** ATI will invite its entire staff to attend a cultural orientation session with TPCN during one of its all staff meetings.

3. **Cultural Programing:** TPCN, in coordination with ATI, will develop educational and experiential programming for visitors to the Alamo complex, in areas such as indigenous languages, native foods, cultural performances, music, arts, oral history, indigenous genealogy, etc. ATI will have sole discretion and responsibility for approving and scheduling such programming.

4. **Authorized Activities:** TPCN will be able to document (by photography, video, audio, etc.) their events at the Alamo for historical documentation, subject to the Alamo's existing Photography, Videography, Cell Phones, and Drones Policy.

5. **Partner Organization:** TPCN will be a Partner Organization, pursuant to the terms and conditions set out in ATI's Partner Policy and Use Agreement.

V. COLLABORATIVE ACTIONS

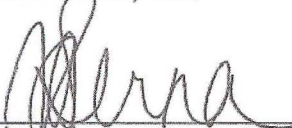
1. **Opportunities for Ongoing and Future Participation.** ATI will evaluate and consider, on an ongoing basis, opportunities for TPCN to participate in projects related to the Alamo site.
2. **Native American History Month.** ATI and TPCN agree to work together on annual programming for Native American History Month in November.

VI. CONFLICT RESOLUTION

ATI and TPCN agree that if a dispute arises under this agreement the parties agree first to raise the issue with the official point of contact and attempt to settle the matter in good faith through informal negotiation. If informal negotiation fails, the parties agree to try in good faith to settle the dispute by mediation before Judge Specia, with such mediation taking place at least 30 days before any Party can pursue any arbitration, litigation, or other dispute resolution procedure. In the event Judge Specia is unable to mediate the dispute, a mediator shall be appointed by the Bexar County Dispute Resolution Center. The process shall be confidential based on terms acceptable to the mediator and/or mediation.

Signatures

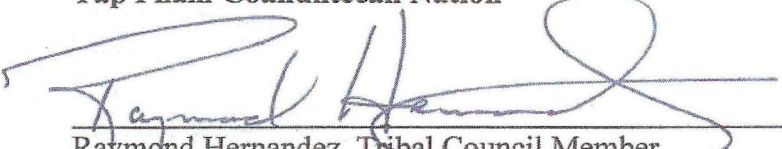
Alamo Trust, Inc.



Daniela Serna, General Counsel

Date: 11/19/2021

Tāp Pilam Coahuiltecan Nation



Raymond Hernandez, Tribal Council Member

Date: 11/19/2021

EXHIBIT “B”

**Attachment to Settlement Agreement
and Mutual Release**

Alamo Trust, Inc.
Confidentiality Agreement for the Museum Planning Committee

It is the policy and requirement of **Alamo Trust, Inc.** ("ATI") that the **Museum Planning Committee** ("Committee") members selected by ATI will not disclose Confidential Information (defined below) to any person, including, but not limited to, the media, their relatives, friends, and business and professional associates, and/or any other third party, unless ATI has authorized disclosure in writing. This policy is not intended to prevent disclosure where disclosure is required by law.

Confidentiality is the preservation of privileged information. Committee members are required to demonstrate professionalism, good judgment, and care at all times in handling any information related to ATI and the Visitor Center and Museum to avoid unauthorized or improper disclosures of confidential information.

While Committee members are expected and encouraged to discuss the details surrounding the Visitors Center and Museum with one another at Committee meetings, they shall not report Confidential Information or opinions expressed in meetings, nor shall they report independently on Committee action, or engage in any communication, including via social media or otherwise that has not been approved in writing to share by the Executive Director of ATI and/or Chair(s) of the Committee, or that would not be supported by ATI's Board policies, procedures, or decisions.

At the end of the Committee member's term, or upon his/her retirement, resignation, or removal from the Committee, he/she shall return, at ATI's request, all documents, papers, and other materials, regardless of medium, which may contain or be derived from Confidential Information, in his/her possession.

Committee members agree to not use pictures, trademarks, client lists, or disclose any Confidential Information acquired by virtue of being on the Committee, even after they complete their service on the Committee.

The term "Confidential Information" shall mean and include, any and all financial information, plans, specifications, renderings, proposals, drawings, schematics, designs, copies of contracts, agreements, instruments, financial projections, and other information and evaluation materials (a) whether or not in written, oral, electronic or other form, (b) whether or not identified as "confidential" or otherwise, or (c) prepared prior to, on or after the date of this Agreement, regardless of the manner or medium in which such material is furnished, and pertaining to the Alamo, Alamo Trust, Inc. and/or the Visitors Center and Museum contemplated for the Alamo Plan project. Without limiting the generality of the foregoing, the term "Confidential Information" will also be deemed to include all analyses, compilations, forecasts, studies, or other documents prepared by any Committee member in connection with such members review/evaluation of Confidential Information.

CERTIFICATION

I have read this Confidentiality Agreement presented above, and I agree to abide by the requirements of the policy and this agreement and agree to inform the Committee Chair(s) immediately if I believe any violation (unintentional or otherwise) of this policy has occurred.

Signature: _____ Name: _____ Date: _____

EXHIBIT “C”

**Attachment to Settlement Agreement
and Mutual Release**

EXHIBIT C

The Joint Statement Regarding Resolution shall provide:

Alamo Trust, Inc. ("Alamo Trust") is pleased to announce an agreement with the Tāp Pīlam Coahuiltecan Nation ("TPCN") which addresses all current disputes and the dismissal of all pending litigation by TPCN.

Alamo Trust looks forward to working with TPCN to implement the Alamo Plan to restore and preserve the Alamo for future generations of Texans.