

## SETTLEMENT AGREEMENT

**WHEREAS**, in 1987, the Fourth Court of Appeals in City of San Antonio v. Alamo Community College District, rendered judgement in favor of the City of San Antonio ("CITY") requiring the Alamo Community College District ("ACCD") to pay that portion of their electric and natural gas service bills destined to be paid to the City; and

**WHEREAS**, in the spirit of cooperation, the parties have agreed to a release, and an expenditure of a portion of the Proceeds to establish a High Technology Center to be utilized in furtherance of CITY'S Economic Development Strategies and Workforce Development; and

**WHEREAS**, the parties have also agreed to the establishment of an Account and expenditure of Proceeds therein to provide customized training, classroom hours, books and materials for CITY employees, various CITY designated programs and for any other lawful purpose in furtherance of CITY's Economic Development Strategies and Workforce Development subject to the terms established herein; and

**WHEREAS**, the parties have attached an Interlocal Agreement between the CITY and ACCD for the purpose of memorializing the parties intent as to the annual implementation and administration of the customized training classroom hours and materials to CITY employees, various CITY designated programs and for any other lawful purpose in furtherance of CITY's Economic Development Strategies and Workforce Development, which is attached as Exhibit "A" and is hereby incorporated into this Agreement for all purposes; and

**WHEREAS**, the parties wish to memorialize their mutual assent by means of this Agreement; **NOW THEREFORE:**

The City of San Antonio (hereinafter referred to as "CITY"), acting through its City Manager, Alexander E. Briseño, pursuant to Ordinance No. 93625, passed and approved March 22, 2001, and the Alamo Community College District (hereinafter referred to as "ACCD"), acting through its Chancellor, Robert W. Ramsay, pursuant to the minute order, passed by the ACCD Board of Trustees on February 20, 2001, which the parties covenant and agree as follows:

### I. DEFINITIONS

- 1.1 The term "ACCD" as used herein shall refer to the Alamo Community College District.
- 1.2 The term "Account" as used herein shall refer to that account that consists of Proceeds and is established to be used in connection with this Agreement.
- 1.3 The term "Administrative Costs" means reasonable costs directly incurred by ACCD related to this agreement. These costs include, but are not limited to, costs and expenses for administration and implementation of this Agreement.
- 1.4 The term "Building Account" as used herein shall refer to that account established to be used in connection with the establishment of a high-technology center, as further described by Section II. Building Account.
- 1.5 The term "CITY" as used herein shall refer to the City of San Antonio.

- 1.6 The term "CPS" as used herein shall refer to the City of San Antonio City Public Service, or its successor in interest.
- 1.7 The term "High Technology Center" as use herein shall refer to a facility that will be used to train CITY employees, various CITY designated programs, or for any other lawful purpose in furtherance of CITY's Economic Development Strategies and Workforce Development.
- 1.8 The term "Proceeds" as used herein shall refer to fourteen percent (14%) of the electric and natural gas charges billed by City Public Service to the Alamo Community College District, which may otherwise be referred to as "Funds"

## **II.**

### **BUILDING ACCOUNT**

- 2.1 The parties acknowledge and agree that ACCD has maintained a portion of Proceeds in a Building Account with a Bank in the City of San Antonio, at it's sole cost and expense, through December 31, 1999, having a balance of \$2,981,571.92.
- 2.2 The parties agree that such amount having accrued in said Building Account, as mentioned above in subsection 2.1, shall be utilized by ACCD for establishing a high-technology center, which may include, but not be limited to, finish-out, improvements and purchase of equipment at Building 210 located on the premises of Kelly AFB, or other equivalent facility so long as such facility is used for the purpose of providing customized training, or college hours to CITY employees, various designated CITY programs, or for any other lawful purpose in furtherance of CITY's Economic Development Strategies or Workforce Development.
- 2.3 ACCD, no later than June 1, 2002, shall provide CITY with a budget for the establishment of the high-technology center, which may include, but not be limited to, finish-out, improvements and purchase of equipment at Building 210 or other equivalent facility as provided by subsection 2.2. ACCD shall provide an accounting to CITY, through its Director of Finance at 506 Dolorosa, San Antonio, Texas 78205, sent in accordance with Section XIII. Notice, of all monies used in connection with the establishment of the high technology center every month during the construction of said finish-out and improvements, and purchase of equipment, as applicable. The total of all CITY's contribution to said establishment of the high-technology center, which may include, but not be limited to finish-out, improvements and purchase of equipment, shall be limited to the total as established in subsection 2.1.
- 2.4 ACCD shall forward to CITY any and all plans for the finish-out and improvements of Building 210 or equivalent facility, as provided for in subsection 2.2, no later than fourteen (14) days before ACCD commences said finish-out and improvements, if applicable. CITY shall have the right to review said plans. All plans submitted to CITY for its review shall comply with all applicable Building Codes.
- 2.5 No later than the tenth (10<sup>th</sup>) day of every month during construction or finish-out, ACCD shall provide an accounting to CITY, through its Director of Finance at 506 Dolorosa, San Antonio, Texas 78205, sent in accordance with Section XIII. Notice, of the Building Account used in connection with the establishment of a high-technology center.
- 2.6 In the event that the amount established in subsection 2.1 are not expended in connection with the establishment of a high-technology center, including, but not limited to, finish-out, improvements

and purchase of equipment at Building 210, or other equivalent facility, CITY and ACCD agree to meet and confer regarding the expenditure and designation of the remaining amount.

- 2.7 In the expenditure of the Building Account, as provided for in subsection 2.2, ACCD shall comply with all applicable local, state and federal laws, rules and regulations

### III. EDUCATION AND TRAINING ACCOUNT

- 3.1 Effective April 1, 2001, ACCD shall establish an Account pursuant to this Section, as described below. ACCD shall deposit in said Account an amount equal to approximately \$415,853.00, that amount which has accrued from January 1, 2000 through the commencement date of this Agreement.
- 3.2 Commencing April 1, 2001 and throughout the term of this Agreement, pursuant to the provisions contained herein, ACCD also agrees to deposit and maintain in said Account, fourteen percent (14%) of its monthly electric and natural gas billed by City Public Service to ACCD, otherwise referred to as Proceeds, plus interest and investment earnings, to be utilized to provide classroom hours, customized training to CITY employees and various CITY designated programs or for any other lawful purpose in furtherance of the CITY'S Economic Development Strategies and Workforce Development as established in the Interlocal Agreement (Exhibit A).
- 3.3 ACCD shall maintain the Proceeds, interest and investment earnings in the Account, which shall be separate and apart from its other accounts, including, but not limited to the Building Account described in Subsection II. Building Account, above, at a Bank in the City of San Antonio, at its sole cost and expense. The Account shall be maintained by ACCD so long as this Agreement is in effect or so long as the Proceeds plus interest and investment earnings remain unused by CITY, whichever is later. All Proceeds plus interest and investment earnings maintained in said Account shall be appropriately safeguarded and secured by FDIC and eligible security, in accordance with the Texas Public Funds Collateral Act. All Proceeds plus interest and investment earnings shall be invested by ACCD in accordance with the Texas Public Funds Investment Act, as amended.
- 3.4 The parties agree that all such amounts and Proceeds, interest and investment earnings in said Account accruing from January 1, 2000, through March 31, 2016 shall be used for the provision by ACCD to CITY of college hours, customized training, for CITY employees and various programs designated by CITY or for any other lawful purpose in furtherance of CITY's Economic Development Strategies and Workforce Development.
- 3.5 The parties agree that CITY is not required to use any specific amount of college hours, training, books, or materials in any given semester or year, and that all Funds in the Account, including but not limited to, Proceeds plus interest and investment earnings, will be maintained by ACCD in the Account until all sums are used by, CITY in accordance with Subsection 3.2 and the Interlocal Agreement (Exhibit A).

### IV. ACCOUNTING FOR DEPOSITS

- 4.1 At the end of each quarter -- March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup> and December 31<sup>st</sup> -- of each and every year during the term of this Agreement, ACCD shall provide to CITY, through its Director of Finance at 506 Dolorosa, San Antonio, Texas 78205, in accordance with Section XIII. Notice, an accounting of the Account established pursuant to Subsection 3.1 of this Agreement. ACCD shall

provide a copy of the monthly bank statement pertaining to this Account; ACCD's CPS monthly analysis statement; its calculation of the 14% attributable to CITY; and interest and investment earnings for the quarter.

**V.**  
**AUDIT OF RECORDS**

- 5.1 In the event a dispute arises between CITY and ACCD regarding whether certain college hours were taken, training was provided, certain books and materials were used, the costs used to calculate the amount to be withdrawn from the Account under Section III. Education and Training Account and the Interlocal Agreement, which is attached as Exhibit "A" or generally regarding the utilization and expenditure of Funds, ACCD shall procure the services of an independent, third party Certified Public Accountant to audit the Education and Training Account, created pursuant to Section III, and all records maintained in connection with this Agreement. Such audit shall commence no later than thirty (30) days from the date of notice of said dispute. Any portion of the Account in dispute shall be maintained in the established Account until the dispute has been resolved as a result of said audit.
- 5.2 In the event either party wishes to terminate this Agreement, in addition to all the requirements herein established, ACCD shall procure the services of an independent, third party Certified Public Accountant, to audit the Education and Training Account, created pursuant to Section III., and all records maintained in connection with this Agreement. Such audit shall commence no later than thirty (30) days from the date of receipt of notice of termination.
- 5.3 The cost of the audit(s) required by subsections 5.1 and 5.2 may be paid out of the Education and Training Account.
- 5.4 ACCD shall maintain said records, documents and accounting records at its main office and shall make such records, documents and accounting records available to CITY, during ACCD's regular business hours, as often as CITY deems necessary, for purposes of auditing, above and beyond that allowed or required by subsection 5.1, inspecting or making copies of same by CITY or its designated representative(s), subject to a student's consent, as required by law.

**VI.**  
**RECORD RETENTION**

- 6.1 ACCD shall retain all records, documents and accounting records created or pertaining, directly or indirectly, to this Agreement, including, without limitation, records of the account established pursuant to this Agreement, throughout the term of this Agreement, and for the longer of that period which CITY or ACCD is required to retain such documents, as established by the Texas State Library and Archives Commission. Upon conclusion of such period ACCD agrees to make copies, at the CITY's request, of all such records, documents and accounting records for CITY or its designated representative, that have not been furnished previously pursuant to this Agreement or by the Interlocal Agreement, subject to a student's consent, as required by law and if applicable, at no additional cost to CITY.

**VII.**  
**ADMINISTRATIVE COSTS**

- 7.1 Once the high-technology center is established pursuant to Section II. Building Account, CITY recognizes that ACCD will receive use of such Proceeds to reimburse ACCD for its Administrative

Costs to administer and implement the Interlocal Agreement payable in arrears quarterly. The parties agree and understand that under no circumstance shall Administrative Costs in the aggregate, exceed eighty thousand dollars (\$80,000.00) each year for the first three years of this Agreement. At the end the third year the parties agree that they will meet and confer regarding the use of Proceeds for ACCD's Administrative Costs to administer and implement the Interlocal Agreement for the remainder of the term of this Agreement.

**VIII.**  
**RELEASE**

- 8.1 That for and in consideration of the aforementioned recitals and other good and valuable consideration the CITY agrees to release, acquit, and forever discharge ACCD. Their current and former agents, servants, employees, representatives, successors, assigns and attorneys, all and each of them from payment of all or any portion of the up to fourteen percent (14%) of the electric and natural gas charges billed by City Public Service to the Alamo Community College District that the CITY asserts is due it or has asserted it is due in the past and future in the case styled City of San Antonio v. Alamo Community College District, Cause No 83-CI-20386 in the 288th District Court of Bexar County, Texas.

**IX.**  
**ASSIGNABILITY**

- 9.1 ACCD shall not assign any interest, right or covenant in this Agreement to any other party or entity without the prior written consent of CITY. In the event ACCD assigns any interest or right in this Agreement without the prior written consent, all Proceeds, interest and investment earnings remaining unused by CITY shall be remitted to CITY, in cash, upon written notice by CITY to ACCD; and Proceeds, plus interest and investment earnings, which would otherwise have been deposited in the Account for use by CITY in connection with this and the Interlocal Agreements, shall be paid directly to CITY, on an annual basis, for the balance of the 15-year term hereof.
- 9.2 CITY shall not assign any interest, right or covenant in this Agreement to any other party or entity without the prior written consent of ACCD.

**X.**  
**AMENDMENT**

- 10.1 No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties, and approved by subsequent City Council and ACCD Board approval.

**XI.**  
**TERM**

- 11.1 The term of this Agreement shall be for a period of fifteen (15) years, and shall commence April 1, 2001 and terminate March 31, 2016. The Agreement shall automatically renew every year thereafter, without notice and without further action by CITY or ACCD, unless this Agreement is terminated pursuant to any of its provisions.
- 11.2 During year twelve (12) of the initial 15-year term, the parties agree to meet and confer regarding the utilization and expenditure of Funds pursuant to this Agreement. Either party may provide notice to the other party in accordance with Section XIII, Notice, to initiate said conference.

**XII.**  
**TERMINATION**

- 12.1 In the event CITY terminates this Agreement prior to the expiration of the 15-year term, the parties agree to meet and confer regarding the utilization and expenditure of Proceeds.
- 12.2 In the event ACCD terminates this Agreement prior to the expiration of the 15-year term, all Proceeds, interest and investment earnings remaining unused by CITY shall be remitted to CITY, in cash, upon written notice by CITY to ACCD; and Proceeds, interest and investment earnings which would otherwise have been deposited in the Account for use by CITY in connection with this Agreement, shall be paid directly to CITY, on an annual basis, for the balance of the 15-year term hereof.

**XIII.**  
**NOTICE**

- 13.1 Unless specifically provided for otherwise, any notice required or permitted to be given under this Agreement shall be given in writing and sent certified mail, return receipt requested, postage prepaid to CITY or ACCD at the addresses set forth below, or to any other address of which written notice of change is given:

**CITY OF SAN ANTONIO**

City of San Antonio  
Attention: Mr. Ramiro Cavazos  
Director, Economic Development Department  
P.O. Box 839966  
City Hall, 4<sup>th</sup> Floor  
San Antonio, Texas 78283-3966

City of San Antonio  
City Clerk's Office  
100 Military Plaza  
San Antonio, Texas 78205

and

**ALAMO COMMUNITY COLLEGE DISTRICT**

Dr. Robert W. Ramsay  
Chancellor  
201 W. Sheridan, Building B  
San Antonio, Texas 78204-1429

**XIV.**  
**AUTHORITY**

- 14.1 The signer of this Agreement for ACCD represents and warrants that he has full legal authority to execute this Agreement on behalf of ACCD and to bind ACCD to the terms and conditions herein contained.

14.2 The signer of this Agreement for CITY represents and warrants that he has full legal authority to execute this Agreement on behalf of CITY and to bind CITY to the terms and conditions herein contained.

**XV.  
CAPTIONS**

15.1 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.

**XVI  
ENTIRE AGREEMENT**

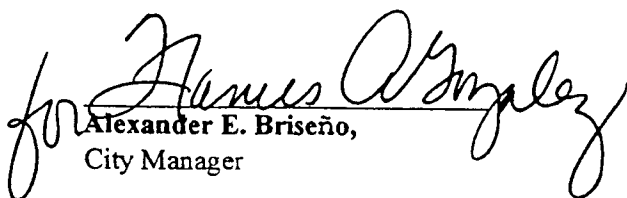
16.1 This Agreement, together with its authorizing ordinance, minute order, and Exhibit A constitute the final and entire agreement between the parties and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same be executed in accordance with Section XII, Amendment.

**XVII  
SEVERABILITY**


17.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision had not been contained herein. It is also the intention of the parties hereto that in lieu of such clause or provision in 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.

IN WITNESS WHEREOF, I hereby execute this document on the \_\_\_ day of \_\_\_\_\_, 2001.

CITY OF SAN ANTONIO

  
Alexander E. Briseño,  
City Manager

Approved as to Form:

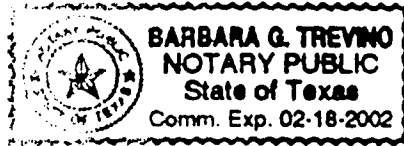
  
Frank J. Garza,  
City Attorney

STATE OF TEXAS            )  
COUNTY OF BEXAR        )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that each of them executed same for the purpose herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 2<sup>nd</sup> day of May, 2001.

Barbara G. Trevino  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



My Commission Expires:

02-18-2002

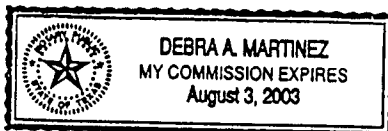


STATE OF TEXAS            )  
COUNTY OF BEXAR        )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ and \_\_\_\_\_ known to me to be the persons whose names subscribed to the foregoing instrument and acknowledged to me that each of them, executed same for the purpose herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27 day of March, 2001.

Debra A. Martinez  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

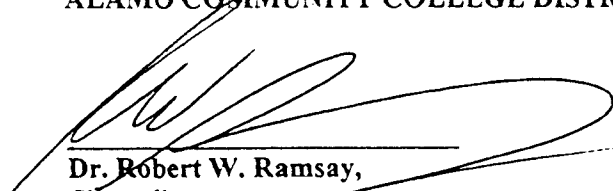


My Commission Expires:

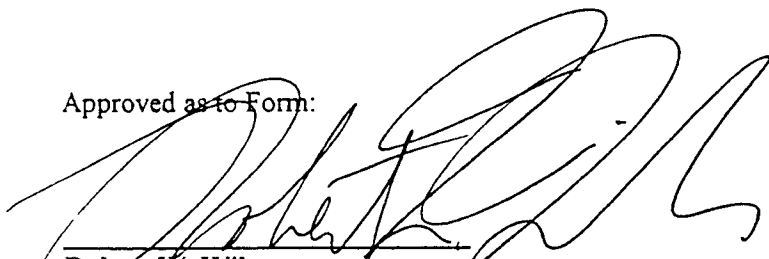
August 3, 2003

IN WITNESS WHEREOF, I hereby execute this document on the 27 day of March, 2001.

ALAMO COMMUNITY COLLEGE DISTRICT

  
\_\_\_\_\_  
Dr. Robert W. Ramsay,  
Chancellor

Approved as to Form:

  
\_\_\_\_\_  
Robert W. Wilson,  
Attorney for the Alamo Community College District