

AN ORDINANCE 2016-06-16-0456

AUTHORIZING THE ACQUISITION OF APPROXIMATELY 165 ACRES OF LAND KNOWN AS CLASSEN-STEUBING RANCH FROM XJ 1869 DEVELOPMENT, LLC FOR \$6,345,122.69 PLUS CLOSING COSTS, AS WELL AS AN OPTION FOR THE PURCHASE OF AN ADDITIONAL 39 ACRES FOR OPEN SPACE AND RECREATIONAL PARK PURPOSES; APPROPRIATION OF \$5,345,122.69 IN 2010 PROPOSITION 1 EDWARDS AQUIFER PROTECTION VENUE PROJECT FUNDS; REAPPROPRIATION OF \$1,000,000.00 FROM THE HARDY OAK ROAD EXTENSION PROJECT; AND AMENDING THE FY 2016-2021 ADOPTED ANNUAL CAPITAL BUDGET.

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WHEREAS, the total of 204 acres being acquired is part of the Steubing Ranch Master Development Plan (MDP) which outlines residential and commercial uses for the property; and

WHEREAS, through conversations between District 9 Councilman, Joe Krier, and the family, the opportunity to preserve and protect this large contiguous piece of open space as public land was discussed; and

WHEREAS, a strategy was formulated to acquire a portion of the property which exists as undeveloped open green space directly over the Edwards Aquifer Recharge Zone in a dense urban environment as well as an option to purchase additional land for future active park development; and

WHEREAS, concurrent to the proposed acquisition, the family (Developer) is entering into a Developer Participation Agreement with the City for an extension of both Hardy Oak Boulevard and Huebner Road; and

WHEREAS, the proposed purchase will acquire green space, which includes land designated for Edwards Aquifer protection and a portion for future park development; and

WHEREAS, the family has agreed to provide an option to purchase 39 additional acres for \$3,790,000.00 plus closing costs for future active park development consistent with the adopted park system plan which supports the addition of recreational parkland and open green spaces; and

WHEREAS, the option must be exercised by March 30, 2018; and

WHEREAS, this proposed acquisition was endorsed by the Conservation Advisory Board in April 2016 and the Parks and Recreation Advisory Board in May 2016; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to acquire approximately 165 acres of land known as Classen-Stebing Ranch from XJ 1869 Development, LLC for \$6,345,122.69 plus closing costs, as well as execute a contract for an option to purchase an additional 39 acres for open space and recreational park purposes. A copy of the contract, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is further authorized to execute any necessary documents to effectuate said acquisition.

SECTION 3. The budget in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01512, Hardy Oak Road Extension, shall be revised by decreasing SAP WBS Element 23-01512-05-05-01 entitled City Funds, SAP GL account 5201140, by the amount of \$1,000,000.00.

SECTION 4. The budget in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01512, Hardy Oak Road Extension, shall be revised by decreasing SAP WBS element 23-01512-90-02-02 entitled FY 2016 Unissued CO's, SAP GL account 6101100, by the amount of \$435,000.00.

SECTION 5. The budget in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01512, Hardy Oak Road Extension, shall be revised by decreasing SAP WBS element 23-01512-90-02-01 entitled CO-20154-01-01-18 (2015 SWAP) SAP GL account 6101100, by the amount of \$443,463.68.

SECTION 6. The amount of \$443,463.68 is reverted in SAP Fund 43912006, 2015 CO Municipal Faculty, SAP WBS CO-20154-01-01-18, SAP GL account 6102100 - Interfund Transfer out entitled Transfer to 23-01512-90-02-01. The amount of \$443,463.68 is authorized to be transferred from SAP Fund 40099000.

SECTION 7. The budget in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 23-01512, Hardy Oak Road Extension, shall be revised by decreasing SAP WBS Element 23-01512-90-14-01 entitled Transfer from I/O# 3900000001828 (FY2015 SMP SWAP), SAP GL Account 6101100 - Interfund Transfer In, by the amount of \$121,536.32.

SECTION 8. The amount of \$121,536.32 is reverted in SAP Fund 11001000, General Fund, SAP Internal Order # 3900000001828, SAP GL account 6102100 - Interfund Transfer out entitled From 11001000 to 23-01512-90-14-01. The amount of \$121,536.32 is authorized to be transferred to SAP Fund 40099000.

SECTION 9. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS element

40-00271-90-02-01 entitled FY 2016 Unissued CO's, SAP GL account 6101100, by the amount of \$435,000.00.

SECTION 10. The amount of \$443,463.68 is appropriated in SAP Fund 43912006, 2015 CO Municipal Faculty, SAP WBS CO-20154-01-01-19, SAP GL account 6102100 - Interfund Transfer out entitled Transfer to 40-00271-90-02-02. The amount of \$443,463.68 is authorized to be transferred from SAP Fund 40099000.

SECTION 11. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS element 40-00271-90-02-02 entitled CO-20154-01-01-19 (2015 SWAP) SAP GL account 6101100, by the amount of \$443,463.68.

SECTION 12. The amount of \$121,536.32 is appropriated in SAP Fund 11001000, General Fund, SAP Internal Order # 390000001828, SAP GL account 6102100 - Interfund Transfer out entitled From 11001000 to 40-00271-90-14-06. The amount of \$121,536.32 is authorized to be transferred to SAP Fund 40099000.

SECTION 13. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS Element 40-00271-90-14-06 entitled Transfer from I/O# 390000001828 (FY2015 SMP SWAP), SAP GL Account 6101100 - Interfund Transfer In, by the amount of \$121,536.32.

SECTION 14. The amount of \$5,345,122.69 is appropriated in SAP Fund 29100000, Edwards Aquifer Protection 2010, SAP Internal Order # 390000001XXX, SAP GL account 6102100 - Interfund Transfer out entitled From 29100000 to 40-00271-90-14-05. The amount of \$5,345,122.69 is authorized to be transferred to SAP Fund 40005000.

SECTION 15. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS Element 40-00271-14-05 entitled Transfer from I/O# 390000001XXX, SAP GL Account 6101100 - Interfund Transfer In, by the amount of \$5,345,122.69.

SECTION 16. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS Element 40-00271-01-11-01 entitled Steubing Ranch - Parks Land Acquisition, SAP GL account 5209010, by the amount of \$1,000,000.00.

SECTION 17. The budget in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, shall be revised by increasing SAP WBS Element 40-00271-01-11 entitled Land Acquisition Costs, SAP GL account 5209010, by the amount of \$5,345,122.69.

SECTION 18. Payment in the amount not to exceed \$6,480,122.69 in SAP Fund 40005000, Park Improvements, SAP Project Definition 40-00271, Edward's Aquifer Land Acquisitions, is authorized to be encumbered and made payable to Alamo Title Company, for title and closing

SW/vv
06/16/16
Item #13A

costs on property, on approximately 165-acre tract of land known as the Classen-Steubing Ranch located in Council District 9, located in Bexar County, Texas.

SECTION 19. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 20. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

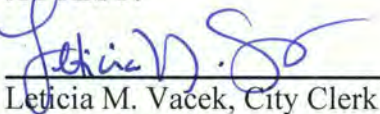
PASSED AND APPROVED this 16th day of June, 2016.



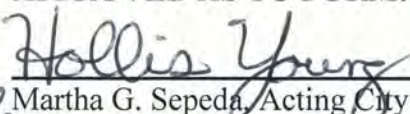
M A Y O R

Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


Martha G. Sepeda, Acting City Attorney

Agenda Item:	13A (in consent vote: 13A, 13B, 13C)						
Date:	06/16/2016						
Time:	10:47:30 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the acquisition of approximately 165 acres of land known as Classen-Steubing Ranch from XJ 1869 Development, LLC for \$6,345,122.69 plus closing costs, as well as an option for the purchase of an additional 39 acres for open space and recreational park purposes; appropriation of \$5,345,122.69 in 2010 Proposition 1 Edwards Aquifer Protection Venue Project funds; redirection of \$1,000,000.00 from the Hardy Oak Road Extension Project; and amending the FY 2016-2021 Adopted Annual Capital Budget.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				x

OPTION FOR THE PURCHASE OF REAL PROPERTY

In consideration of **\$1,000.00** deposited with the Title Company (defined below), consisting of \$500.00 as "Independent Consideration" and \$500.00 as "Earnest Money", the receipt and adequacy of which is hereby acknowledged, and of the agreements contained herein (this "Agreement"), XJ 1869 RANCHES LIMITED PARTNERSHIP, a Texas limited partnership (collectively "Seller"), hereby grant to THE NATURE CONSERVANCY, a nonprofit corporation of the District of Columbia ("Conservancy"), the exclusive right and option to purchase ("Option") (i) that certain land situated in Bexar County, State of Texas, containing approximately **165.349 acres**, more or less, being more particularly described and/or depicted on Exhibit A-1 attached hereto and incorporated herein ("Tract 1") and (ii) that certain land situated in Bexar County, State of Texas, containing approximately **38.712 acres**, more or less, being more particularly described and/or depicted on Exhibit A-2 attached hereto and incorporated herein ("Tract 2") (each may also be referred to herein respectively as a "Tract"), together with all rights, appurtenances, easements, improvements, fixtures and hereditaments on and pertaining to Tract 1 and Tract 2, respectively, including without limitation, water rights, mineral rights and interests owned by Seller, access rights, timber rights, development rights (including impervious cover), wastewater rights and all other rights (collectively, Tract 1 and Tract 2 being the "Property"), under the following terms and conditions:

1. **OPTION PERIODS.** This Agreement creates a separate and independent Option for each Tract, and each Option shall commence on the effective date of this Agreement. The Option for Tract 1 shall terminate on **August 31, 2016** ("Tract 1 Option Period"), and the Option for Tract 2 shall terminate on **March 30, 2018** ("Tract 2 Option Period"). Each Option shall be exercised by the Conservancy sending written notice (the "Notice of Election") to Seller on or before the expiration of the respective Option Period, as may be extended upon written agreement by the parties. If the Conservancy fails to timely send Seller the Notice of Election for Tract 1, this Agreement and the Options created hereunder shall automatically terminate for Tract 1 and Tract 2; if the Conservancy exercises the Option for Tract 1 and closes on the acquisition of Tract 1 but fails to timely send Seller the Notice of Election for Tract 2, this Agreement and remaining Option for Tract 2 shall automatically terminate. Exercise shall be deemed timely if such written notice is delivered on or before the last day of the respective Option Period.

2. **PURCHASE PRICE.** If the Conservancy timely exercises the respective Options, the purchase price of Tract 1 shall be **\$6,345,122.69** and the purchase price of Tract 2 shall be **\$3,790,054.87**. Any acreage, as surveyed, being less than the amounts set forth in Exhibit A-1 and Exhibit A-2, or specifically excepted by **Alamo Title** ("Title Company") in the final Title Commitment for the respective Tract as being outside record title of Seller shall be excluded from the calculation of the purchase price at rates equal to appraised values established for specific acreages within Tract 1 and Tract 2, unless an appropriate boundary agreement (or other agreement to quiet title) is entered into at Seller's discretion at or prior to closing for the acreage outside record title that is approved by the Conservancy and acceptable to the Title Company for removal of the exception for the subject acreage from the respective Title Policy for the Tract. Half of the Independent Consideration and Earnest Money will be applied to the purchase price for each Tract and the balance of the purchase price for the respective Tract will be paid at each closing ("First Closing" for Tract 1 and "Second Closing" for Tract 2); provided, however, the Seller and the City of San Antonio ("COSA") agree upon and execute a developer participation agreement involving Seller's share of the cost of the construction of Hardy Oak Boulevard and Huebner Road ("Developer Participation Agreement"). Seller does not consider this transaction to have a "bargain sale" component, and Seller will not submit an IRS Form 8283 "Noncash Charitable Contributions" to the Conservancy in connection with this transaction.

3. **CLOSING.** The First Closing shall be held on the later of **August 31, 2016** or within thirty (30) days from the date the Conservancy timely sends its Notice of Election for the First Tract ("First Closing Date"), and the Second Closing shall be held on the later of **March 30, 2018** or within thirty (30) days from the date the Conservancy timely sends its Notice of Election for the Second Tract ("Second Closing Date"). Each closing will take place at the offices of **Alamo Title**, attention: Steve Aycock, with an address of 950 E. Basse, San Antonio, TX 78209, or such other place as the parties may mutually agree. Each closing may be held in escrow through an agent designated by Conservancy, by overnight delivery of closing documents to the Title Company, or as otherwise agreed to by the parties.

4. **SURVEY.** The Conservancy will secure and deliver to Seller and Title Company a survey and complete legal description of Tract 1 and Tract 2 ("Survey"). The final Survey for each Tract approved by Seller and the Conservancy shall be substituted for the property description in

Exhibit A-1 and Exhibit A-2, respectively, and used for the deed conveying the respective Tract to the Conservancy. The cost of the Survey shall be the responsibility of the Conservancy.

5. **TITLE.** The Conservancy shall obtain an owners title commitment for each Tract (the "Commitment") binding the Title Company to issue at each respective closing an owner's policy of title insurance (the "Title Policy"), in an amount equal to the respective purchase price, together with legible copies of all exceptions and other matters shown thereon; provided the Seller shall bear the sole cost, if any, of the Title Company's provision of such copies. The Conservancy shall have a period ending the later of (i) fifteen (15) days following its receipt of each respective Commitment (together with the exception documents), Survey and its legal description or (ii) thirty (30) days after the Conservancy timely sending its Notice of Election ("Objection Period"), to review and object to the matters contained in the Commitment or in the Survey and its legal description for each respective Tract. If the Conservancy objects to any such matter, the Conservancy shall notify Seller of such objection for the respective Tract during said period and Seller shall thereupon have fifteen (15) days after receipt of such notice ("Cure Period") to cure the Conservancy's objections. Seller is not obligated to cure such objections or incur out-of-pocket costs therefore. In the event Seller does not or is unable to cure such objections within the respective Cure Period to the satisfaction of the Conservancy in the Conservancy's sole discretion, the Conservancy may: (a) terminate the Option as to the respective Tract by giving Seller written notice within fifteen (15) days after the expiration of the respective Cure Period, whereupon half of the Earnest Money shall be returned to the Conservancy and half of the Independent Consideration shall be retained by Seller, and thereafter neither party shall have any further rights, liabilities or obligations hereunder for the respective Tract; (b) waive, in writing, any such objections and close; or (c) attempt to cure the objections to the Conservancy's satisfaction, and Seller agrees to act in good faith and cooperate with the Conservancy in such efforts by the Conservancy, and the Option Period and Closing for the respective Tract shall be extended up to fifteen (15) days for this purpose. In addition, if following the Conservancy's receipt of the respective Commitment, Survey, and its legal description, the Title Company should become aware of any additional exceptions to the respective Tract or any revisions are made to the respective Survey or its legal description, Seller's and the Conservancy's rights and obligations and the applicable time periods set forth in this Section shall begin anew with respect to such additional exceptions or survey revisions and the Option Period and Closing for the

respective Tract shall be extended accordingly. The term "Permitted Exceptions" shall include and be limited to all Schedule B exceptions of either Commitment not objected to by the Conservancy within the period herein provided; all items shown on Schedule C of either Commitment shall not be considered Permitted Exceptions and shall be satisfied by Seller at its sole expense on or before the respective Closing. The cost of the basic premium for the title policy for each Tract shall be the responsibility of the Seller, and any additional endorsements thereto desired by the Conservancy shall be the responsibility of the Conservancy.

At closing, the Seller will convey good, insurable and indefeasible title to the respective Tract, together with all rights, hereditaments and appurtenances belonging thereto (including insurable legal access, all mineral rights owned by Seller, all water, development, and wastewater rights, all timber rights, and all government farm program crop bases and contract acres), to the Conservancy in fee simple, free and clear of all liens, encumbrances, restrictions, rights or exceptions except those of record that are acceptable to the Conservancy. If for any reason the Seller cannot deliver title at closing as required by this Agreement for a respective Tract, the Conservancy may elect to: (i) accept the Tract with title as it is, or (ii) refuse to accept the Tract in which case the Seller shall retain half of the Independent Consideration as its sole remedy, but half of the Earnest Money will be returned to the Conservancy.

6. **DOCUMENTS FOR CLOSING.** Seller shall execute and deliver at or before the Closing for each respective Tract a General Warranty Deed, Affidavit as to Debts, Liens, Possession and Use, an Affidavit of Non-Production, a Non Foreign/FIRPTA Affidavit, an Affidavit of Marital Status, an Affidavit as to No Visible or Apparent Easements (to the extent an exception is shown on the Commitment), any owner's affidavits or documents required by the Title Company to remove the standard title policy exceptions, and any other documents necessary to close the sale of the respective Tract in accordance with the terms of this Agreement and as may be required by the Title Company. In addition, Seller and COSA shall execute the Developer Participation Agreement described in Section 2 at or before the First Closing. The Parties shall also execute a Grazing Lease to Seller as defined and described in Section 8 if desired by the Seller and consented to by the Conservancy. Except for the General Warranty Deed, Developer Participation Agreement, Affidavits as to Debts, Liens, Possession and Use and Non-Production, Marital Status, and No Visible or Apparent Easements, Non Foreign/FIRPTA Affidavit, and Grazing Lease, if any, these documents will be prepared at the expense of Seller. However, any of said affidavits may be

provided utilizing forms prepared and required by the Title Company that are approved by both parties such as the Affidavits of Marital Status and Non Foreign/FIRPTA Affidavit.

7. **CLOSING EXPENSES AND ADJUSTMENTS.** Seller, as owner of the Property, shall be responsible for the payment of all taxes and assessments levied against the Property. Any delinquent real estate taxes and all levied assessments are Seller's responsibility and shall be satisfied of record by Seller at or before the Closing for each respective Tract.

Any real estate taxes assessed against either Tract for the calendar year of its respective closing will be prorated to the date of closing. If the Option for a Tract is assigned to COSA, the prorated property taxes of Seller for such Tract shall be paid in full by Seller at closing pursuant to Texas Tax Code Section 26.11 (Property Taxes – Acquisition by Government). Otherwise, if the tax assessment for the calendar year of Closing is available, the Seller shall pay the full amount of such taxes prior to Closing and the Conservancy's pro rata portion shall be paid to Seller at closing; otherwise the Conservancy shall receive a credit against the purchase price for the Seller's pro rata portion of such taxes. The Seller's pro rata portion of such taxes shall be based upon taxes actually assessed and charged for the calendar year of each Closing and shall not include any taxes accrued under agricultural or other special use exceptions. Except as provided above, if, for any reason, ad valorem taxes for the calendar year of Closing for the respective Tract have not been assessed, such proration shall be estimated based upon ad valorem taxes for the immediately preceding calendar year and an appropriate adjustment shall be made between the parties when the taxes of the calendar year of the respective Closing are assessed. Seller shall be responsible for ad valorem taxes on Tract 1 and Tract 2 for periods prior to the calendar year of the respective Closing; provided, however, if Seller's change in the use of the respective Tract prior to its Closing or denial of a special use valuation results in the assessment of additional taxes for periods prior to such Closing, Seller shall be responsible for the payment of such taxes. The obligations in this paragraph shall not merge with the Deeds to be delivered hereunder but shall survive each Closing.

For each respective Tract, Seller will pay any transfer taxes on the conveyance to the Conservancy, the title examination, the basic premium for the title policy, tax certificate fees, and any fees or costs related to instruments to be executed or recorded such as the Affidavit as to Debts, Liens, Possession and Use, Affidavit as to No Visible or Apparent Easements, a release of any deed of trust or other liens or for satisfying any items disclosed in Schedule C of each Title Commitment.

The Conservancy will pay any recording fees for the respective Deed and Affidavit of Non-Production and any additional endorsements to the respective Title Policy desired by the Conservancy. Any escrow fees will be split evenly between the Conservancy and Seller, and other standard Closing costs not otherwise addressed in this Agreement will be paid according to local custom. Each party will be responsible for its own attorney fees.

8. **CONDITION OF PROPERTY/RISK OF LOSS.** Seller shall not transfer or encumber any interest in either Tract prior to its respective Closing with the exception of an easement through the property for the Vista Ridge Water Project, and easements for the construction of sanitary sewer mains required by the Utility Service Agreement (USA) previously executed by the San Antonio Water System and Seller, which the Conservancy acknowledges shall be executed prior to the Closing of Tract 1 and Tract 2. The Conservancy grants a release to Seller to independently negotiate and grant the Vista Ridge Water easement. Seller shall keep each Tract in its current condition until the respective Closing and shall prevent and refrain from any use of either Tract that would diminish its value or adversely affect the Conservancy's intended use of the Property for park and/or open space purposes. In the event of any adverse change in the condition of a Tract, the Conservancy may elect to refuse to accept such Tract, in which case half of the Earnest Money shall be returned to the Conservancy and half of the Independent Consideration shall be retained by the Seller. Seller shall remove and properly dispose of all rubbish or trash, including any hazardous or toxic chemical substances or materials, desired by the Conservancy to be removed from either Tract prior to Closing. Seller will deliver full possession of each Tract to the Conservancy at the respective Closing; provided, that subject to the Conservancy's consent which it may withhold in its sole discretion, the Conservancy may grant Seller a short-term lease of all or a part of either tract of the Property at either Closing, if desired by Seller, for the grazing of Seller's livestock subject to terms and conditions acceptable to both parties ("Grazing Lease").

9. **RIGHT OF ENTRY AND INSPECTION.** The Conservancy and its agents shall have the right to enter upon the Property at reasonable times for surveying, preparing the Survey and its legal description, conducting an environmental inspection and assessment to detect hazardous or toxic substances, and other reasonable purposes related to this transaction. Based upon the results of the environmental inspection and assessment, the Conservancy may elect to refuse to accept a Tract, in which case half of the Earnest Money shall be refunded to the Conservancy and half of the Independent Consideration shall be retained by the Seller for each Tract.

10. **SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller hereby warrants and represents to the Conservancy the matters contained in the following subparagraphs and agrees to indemnify, defend (with counsel approved by the Conservancy) and hold harmless the Conservancy from any loss or liability resulting from any breach of any of said warranties or representations. Said representations, warranties and indemnities shall survive Closing.

- a. Title to the Property/Authority. Seller is the sole legal owner of the Property in fee simple. The Property is not now subject to any written or oral lease, option, or agreement of sale, claim or legal proceeding except as set forth herein. Seller has the full power and authority to execute this Agreement and all agreements and documents referred to in this Agreement and to fully perform as required by this Agreement.
- b. Condition of Property. To the actual knowledge of Seller, Seller is not aware of any facts that would adversely affect the Conservancy's intended use of the Property for park and/or open space purposes.
- c. Impervious Cover. There are 35.45 acres of allowable impervious cover on the Property in accordance with an approved 2008 Impervious Cover Master Development Plan that will transfer to the Conservancy upon Closing.
- d. Hazardous Materials. To the actual knowledge of Seller, the Property is not now nor has it ever been used for the manufacture, use, storage or disposal of any hazardous or toxic substance, material or waste within the meaning of any applicable environmental statute, ordinance or regulation. To the actual knowledge of Seller, no hazardous or toxic substance, material or waste, including without limitation asbestos or material containing or producing polychlorinated biphenyls (PCBs), is presently stored or located on the Property at levels greater than natural background concentrations. To the actual knowledge of Seller, the Property is not subject to any "superfund" or similar lien or any claim by any government regulatory agency or third party related to the release or threatened release of any hazardous or toxic substance, material or waste.
- e. Tanks/Wells. To the actual knowledge of Seller, no underground or aboveground storage tanks, septic tanks or wells have been located on or under the Property, except for one well identified in the Environmental Site Assessment and attached herein as Exhibit B.
- f. No Condemnation. To the actual knowledge of Seller, there are no condemnation proceedings pending with regard to any portion of the Property and to the actual knowledge

of Seller, Seller does not know of or have reason to know of any proposed condemnation proceedings with regard to any portion of the Property.

- g. Broker. Seller has not engaged the services of any broker for this transaction, and any claims for broker fees, payments or similar charges claimed to arise by, through or from Seller shall be Seller's sole responsibility.
- h. Non-foreign Status. To inform the Conservancy that withholding of tax is not required under Section 1445 of the Internal Revenue Code, Seller hereby certifies that Seller is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law. At each Closing, Seller agrees to deliver to the Conservancy a Non Foreign/FIRPTA affidavit certifying as to Seller's non-foreign status, together with Seller's social security number/federal taxpayer identification number. Seller consents to the delivery of such affidavit to the Conservancy, and understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment or both.
- i. No Farming. The Property is not subject to any government cost-share contracts or other agreements which restrict either the use of the Property or the modification of any improvements.
- j. Conflict of Interest. In order to assist the Conservancy in identifying potential conflicts of interest, Seller will complete, sign and deliver to the Conservancy its conflict disclosure form and any similar conflict disclosure form required by COSA ("Disclosure Forms"). Seller warrants and represents to the Conservancy that the information in the Disclosure Forms is and remains, to the best of Seller's knowledge, true and correct. Seller shall promptly notify the Conservancy in writing if any change in circumstances occurs prior to Closing that would change any response on the Disclosure Forms. In the event that any answers on the Disclosure Forms change prior to Closing, or in the event that any material misrepresentation or misstatement in the Disclosure Forms is discovered before Closing, the Conservancy may elect, as its sole remedy, to declare this Agreement null and void, in which case both the Independent Consideration and Earnest Money shall be returned to the Conservancy.
- k. Compliance with Anti-terrorism Laws. Seller agrees that it will use any funds received under this agreement in compliance with all applicable antiterrorist financing and asset

control laws, regulations, rules and executive orders, including, but not limited to the USA Patriot Act of 2001 and Executive Order 13224.

The representations and warranties set forth herein shall be continuing and shall be true and correct on and as of the respective Closing Date for each Tract with the same force and effect as if made at that time. If any of Seller's warranties or representations above are discovered by the Conservancy, on or prior to such Closing Date, to be misrepresented or inaccurate, the Conservancy shall notify Seller promptly in writing, and Seller shall have the opportunity to correct or remedy such misrepresentation or inaccuracy. Seller shall notify the Conservancy prior to such Closing Date if Seller becomes aware that any representation or warranty is not accurate. If such misrepresentation or inaccuracy is not remedied by Seller prior to such Closing Date to the Conservancy's satisfaction, the Conservancy may, upon written notice to Seller and as the Conservancy's sole and exclusive remedy either (1) terminate this Agreement entirely or as to either Tract, and in the former case, both the Independent Consideration and Earnest Money shall be promptly refunded to the Conservancy and in the latter case, half of the Independent Consideration and Earnest Money shall be refunded to the Conservancy, and neither party shall have any further rights or obligations hereunder except as to the surviving obligations, or (2) proceed to the respective Closing of a Tract thereby waiving any claim for breach of warranty or misrepresentation with respect to such misrepresentation or inaccuracy.

11. **TAX DISCLAIMER.** Seller hereby represents and warrants that Seller (i) has not relied upon any representation by or on behalf of the Conservancy concerning the tax consequences of this specific transaction; and that Seller (ii) has been advised by the Conservancy to seek Seller's own professional advice regarding such tax consequences.

12. **NOTICE.** Except as otherwise set forth herein, all notices required to be given under this Agreement shall be deemed given upon the earlier of actual receipt or two days after being mailed by registered or certified mail, return receipt requested, or on the date prior to 5:30 p.m. CST of successful facsimile or email transmission, addressed to:

(a) if to Seller:

(b) if to Conservancy:
THE NATURE CONSERVANCY
Attn: Legal Department
200 E. Grayson St., Suite 202
San Antonio, Texas 78215
210-301-5779 (tele.)
888-203-5400 (fax)

Email: jrice@tnc.org

With copy to:

With copy to:
THE NATURE CONSERVANCY
Attn: Jeff Francell
318 Congress Avenue
Austin, Texas 78701
512-623-7250 (tele.)
Email: jfrancell@tnc.org

AND

City of San Antonio
Attn: Grant Ellis, Special Projects Manager
Parks and Recreation Department
Edwards Aquifer Protection Program
114 W. Commerce, 10th Floor
San Antonio, Texas 78205
(210) 207-7888 (fax), 207-2815 (tele.)
Email: grant.ellis@sanantonio.gov

13. **REMEDIES.** In addition to any other remedy specifically set forth in this Agreement, the Conservancy has the right to enforce the provisions of this Agreement through an action for specific performance, injunctive relief, damages, contribution or any other available proceedings in law or equity. The election of any one remedy available to the Conservancy under this Agreement shall not constitute a waiver of other available remedies.

14. **ASSIGNMENT.** This Agreement and the Options created hereunder may be assigned by the Conservancy at its sole discretion in their entirety or partially as to either Tract, and upon such assignment, the Conservancy shall be released from any and all respective obligations hereunder.

15. **EXHIBITS.** The following exhibits are attached hereto and incorporated by reference herein: Exhibit A-1 (Tract 1 Description), Exhibit A-2 (Tract 2 Description), and Exhibit B (Location of Well).

16. **BINDING EFFECT.** This Agreement and the Options created hereunder becomes effective when this Agreement has been fully executed and shall then apply to and bind each of Seller and the Conservancy and their heirs, executors, administrators, successors and assigns.

17. **REPRESENTATION BY COUNSEL.** Seller acknowledges that the Conservancy has advised Seller to have Seller's attorney review this Agreement and all attached Exhibits, and that

the Conservancy is not acting on behalf of, or advising Seller in this transaction and Seller has not relied on any information or advice provided by the Conservancy or its agents.

18. **COMPLETE AGREEMENT.** This Agreement constitutes the sole and complete agreement between the parties and cannot be changed except by written amendment. No representation or promise not included in this Agreement or any written amendment shall be binding upon the parties.

19. **CORPORATE APPROVAL.** The exercise of either Option for Tract 1 and Tract 2 and the sale contemplated thereby are subject to the approval of the President of The Nature Conservancy and in the event either or both Options are assigned to COSA, by the City Council of COSA. If the exercise of either Option or sale of either Tract is not consummated for failure of this condition, both the Independent Consideration and Earnest Money shall be forfeited as Seller's sole remedy and thereafter neither party shall have any further rights, liabilities or obligations hereunder.

20. **MISCELLANEOUS.**

- a. No-Waiver. No provision of the Agreement shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by Seller and the Conservancy. No act or failure to act by Seller and the Conservancy shall be deemed a waiver of its rights hereunder, and no waiver in any one circumstance or of any one provision shall be deemed a waiver in other circumstances or of other provisions.
- b. Holidays. If any date set forth in this Agreement or computed pursuant to this Agreement falls on a Saturday, Sunday or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.
- c. Attorneys' Fees. In the event of any breach or default hereof by a party, the non-defaulting party shall be entitled to recover its costs and expenses of litigation and settlement, including, without limitation, attorneys' fees and expenses, court costs, settlement costs and experts' costs, and fees. Notwithstanding anything herein to the contrary, should this Agreement or its Options be assigned to COSA, then COSA, as assignee, shall NOT be liable, as defaulting party, to Seller, for Seller's costs and expenses of litigation and settlement, including, without limitation, attorneys' fees and expenses, court costs, settlement costs and experts' costs, and fees; provided, however,

if Seller is the prevailing party, it shall not be responsible for any of COSA's costs and expenses of litigation and settlement, including, without limitation, attorneys' fees and expenses, court costs, settlement costs and experts' costs, and fees.

- d. Governing Law & Venue. This Agreement shall be construed and governed by the laws of the State of Texas and any applicable federal laws. Venue for any claim or dispute arising under or in connection with this Agreement shall be in the state or federal courts of Bexar County, Texas.
- e. Counterparts. This Agreement may be executed in multiple counterparts, each of which taken together shall constitute a single instrument.

[SIGNATURE PAGE(S) TO FOLLOW]

Executed on the dates below, with the effective date being the date of the last signature of the parties hereto.

SELLER:

XJ 1869 RANCHES LIMITED PARTNERSHIP

By its General Partner: _____

By: _____
Name: _____
Title: _____

Date: _____

THE NATURE CONSERVANCY

By: _____
Name: _____
Title: _____

Date: _____

TITLE COMPANY RECEIPT

ALAMO TITLE acknowledges receipt of this Agreement executed by Seller and the Conservancy and the Independent Consideration of \$_____.00, plus the Earnest Money of \$_____.00, in one lump sum/check totaling \$_____.00, this _____ day of _____, 2016, and agrees to hold same in accordance with the terms hereof.

BY: _____

NAME: _____

Escrow Officer

DATE: _____

DRAFT

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2016,
by _____, _____ of _____,
General Partner of XJ 1869 RANCHES LIMITED PARTNERSHIP, in said capacity on behalf
of said entity.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____, 2016,
by _____, _____ of the Texas Chapter of THE NATURE
CONSERVANCY, in said capacity on behalf of said entity.

Notary Public, State of Texas

EXHIBIT A-1

TRACT 1 DESCRIPTION

165.349 acres of land, more or less, located in Bexar County, Texas, consisting of six (6) tracts of land more particularly described in the attached field notes and referenced therein as Tract 1 (12.162 ac.), Tract 2 (109.955 ac.), Tract 3 (37.663 ac.), Tract 4 (2.164 ac.), Tract 7 (0.814 ac.), and Tract 8 (2.585 ac.):

[see attached field notes]

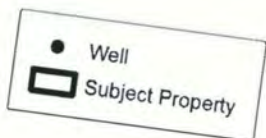
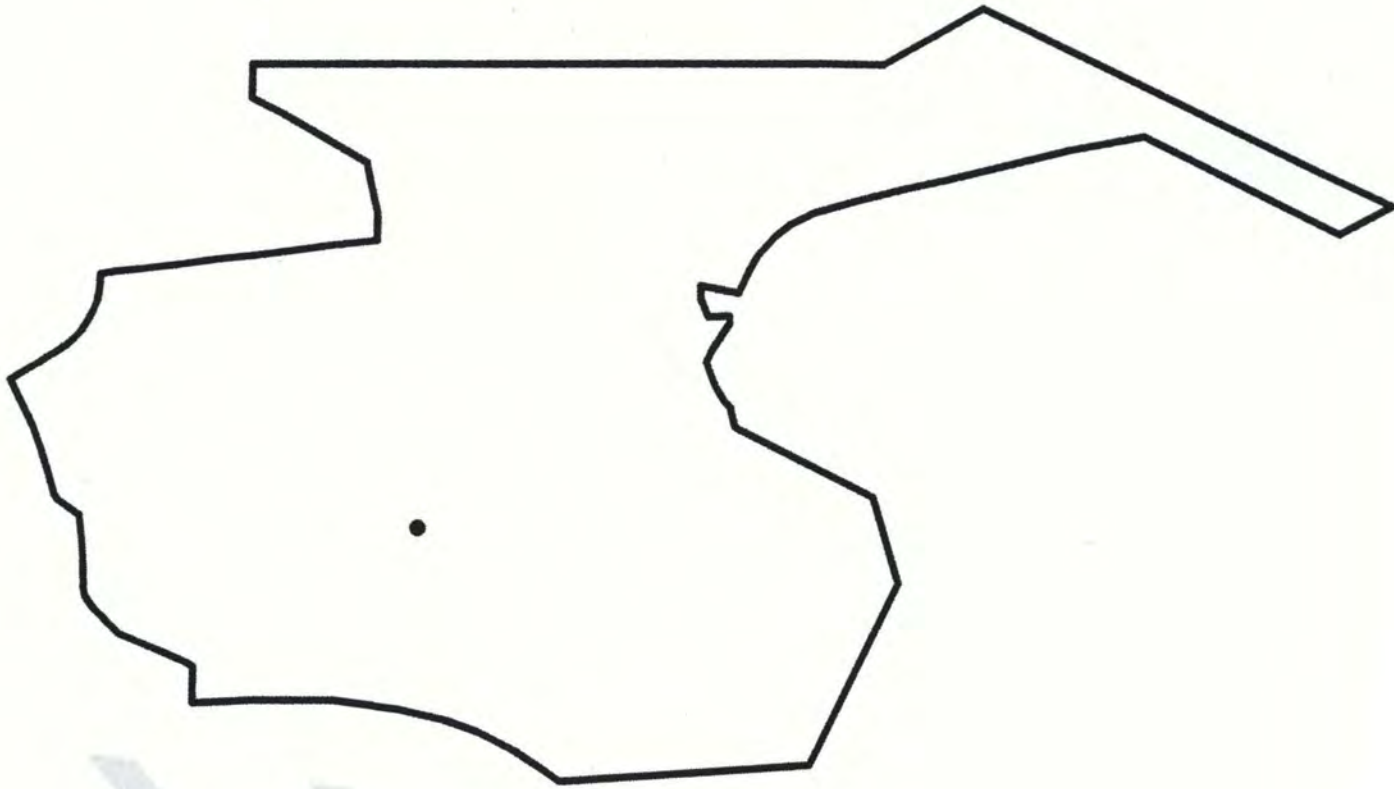
EXHIBIT A-2

TRACT 2 DESCRIPTION

38.712 acres of land, more or less, located in Bexar County, Texas, consisting of six (6) tracts of land more particularly described in the attached field notes and referenced therein as Tract 5 (11.839 ac.), Tract 6 (2.818 ac.), Tract 9 (17.389 ac.), Tract 10 (3.472 ac.), Tract 11 (1.803 ac.), and Tract 12 (1.391 ac.):

[see attached field notes]

EXHIBIT B
LOCATION OF WELL



DRAFT



PARKS & RECREATION
SAN ANTONIO

Edwards Aquifer Protection and Parkland Acquisition

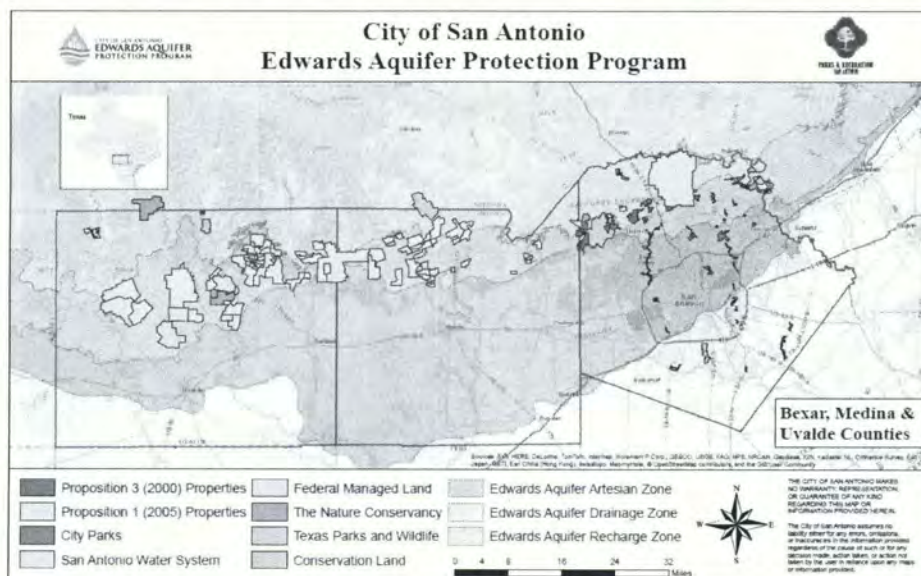
City Council

Agenda Item #13

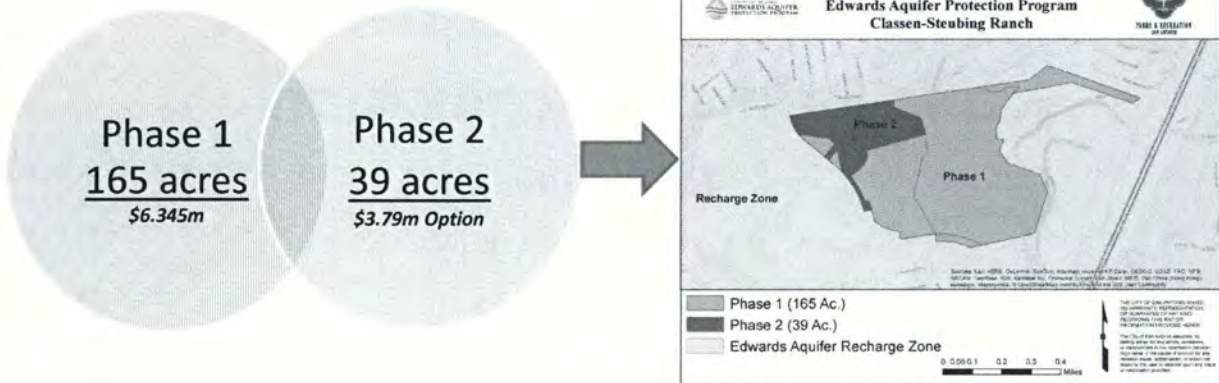
June 16, 2016

Parks and Recreation Department

Total Land Protected = 135,995 acres



Acquisition Background



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Acquisition Benefits

- Sits entirely over Recharge Zone in dense urban environment
- Existing inundation easement
- Edwards Aquifer Authority report high water quality & very high water quantity
- Edwards Aquifer Authority to hold conservation easement
- Connectivity to Stone Oak Park



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39-Acre Option



- Additional 39-acres for \$3.79m
- Option expires March 2018

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Developer Participation Agreement

- Developer to design & construct extensions of Huebner Road & Hardy Oak
- Total Cost: \$12,583,000
- City's contribution: \$6,248,200
- Design completion- May 2017
- Construction completion- Dec 2019



Huebner Road & Hardy Oak Blvd Extensions

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Recommendation

- Staff recommends approval of this request.

